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To Lay to Burrows Esq

with the regard of

Paul Dubois

Nov. 1909.



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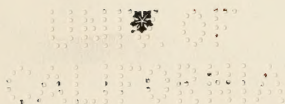
F. R. Woodruff

Addresses

Historical—Political—Sociological

By

Frederic R. Coudert



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TO MY
ALBION

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INTRODUCTORY NOTE

THE addresses and articles here brought together comprise but the recoverable fragments of the record of a life singularly broad and useful. Taken up mainly with the work of a profession which vouchsafes little leisure, the life of a lawyer rarely leaves any surviving residuum other than the latent influence born of every effort to make good the reign of law, order, and justice. However broad his sympathies, however alive his realization of the manifold fields in which there is good work to be done, it is rare for the lawyer who does not virtually abandon his profession, to leave any other record of his usefulness than the evanescent memory of an advocate's labors,—"brief as lightning in the collied night."

Mr. Coudert's intellectual activity and the wide reach of his sympathies were such that neither the science of the law nor the active exercise of its profession, deeply as they engrossed his attention, could suffice to absorb the individual or to monopolize his heart and brain. From his college days to the last hours of his life, his spirit moved, "without haste, without rest" through the orbit of all human interests, throwing out its illuminating sparks and diffusing its cordial warmth upon every endeavor and aspiration within its ken.

Frederic René Coudert was born in the city of New

York on the 1st of March, 1832, and continued a resident of the city and identified with its interests until his death. He received his early education in the school established by his father, Charles Coudert, an officer of the Imperial Guard, who found it necessary to exile himself from his native country owing to political prosecutions after the Restoration. This training, under his father's able and watchful supervision, was such that at the early age of fourteen he was ready for entrance to Columbia College, from which he graduated in 1850 at the age of eighteen. Many years later, in a public discussion, he had occasion to say that there were a few things upon which he was sensitive: the one was the land of his fathers; and the other, the bark of Peter. Evidence of his devotion to these was never wanting. It began during his college career: When one of the professors, on the occasion of the Revolution of 1848, indulged in harsh strictures with reference to French achievements, the young scholar, whose knowledge of history was already sound and broad, was stung into a retort, which was cut short by an admonition that no discussion of "politics" was allowable. It was shown again by the selection and treatment of the subject for his graduation oration—a review of the "Isms" of the day.

While he pursued his studies at Columbia, he gave lessons to a large class of boys in Spanish and in French, and at times even his evenings were given to the tuition of adults.

On leaving college, he took up the study of law in the office of Edward Curtis, at that time one of the leaders of the New York Bar, a prominent Whig, the friend and intimate of Webster, and at one time a member of Congress and Collector of the Port.

While pursuing his law studies, the young man wrote and translated for the daily and weekly press. At that time the leading sporting journal was Porter's *Spirit of the Times*, under the editorship of that ripe scholar and genial gentleman William T. Porter. This publication united literary skill, polish, wit, and urbanity with its records and discussions of sport, and it was mainly to its columns that the contributions of the young law student found their way.

Always a great reader and a close student, his preparation for the Bar was thorough; immediately upon his admission, he entered upon the practice of the law, and from the modest beginnings with which every earnest member of the profession is content, his success, his influence, and his reputation grew steadily and continuously until his pen and his voice were stilled and his mission ended.

At no time did he confine his study and research, nor his active labors and co-operation, to purely professional subjects. His clear discernment early taught him that the greatest masters of their professions are those who, not content with its technical training, find in every field of knowledge and in all channels of life experience and acquirements to strengthen and to elevate the vocation which, without such aids, tends to narrow its influence and lose its power. To this intellectual appreciation was added the moral conviction that no man's obligations to his fellows are discharged by even the most assiduous devotion to the exigencies of his profession, and that duty has many other calls upon him.

Very early in his professional career, he lectured in aid of struggling churches, choosing such congenial subjects as Edmund Burke, with whose great concep-

tions of governmental duties and responsibilities he was always in unison; John Philpot Curran, and others of that galaxy of the Irish Bar who united mastery of their professions with passionate devotion to their country, and who irradiated their toilsome pathways with unfailing humor and abundant wit.

Under the auspices and in aid of the work of the Catholic Union, Mr. Coudert delivered the series of lectures which, under the titles of "Morals and Manners," "Lying as a Fine Art," and "The Church and the Bar," helped to dispel many popular misapprehensions.

The wide sympathies of the man and the corresponding activity, to which I have alluded, brought their burden and their reward. Opportunities are never wanting to the man who is ready for them. The St. Vincent de Paul Orphan Asylum benefited by his counsel for years; during ten years, he presided over the work of the French Benevolent Society, quieted dissensions, extinguished enmities, and welded into a potent and beneficent instrument that worthy institution; for years he was President of the Alumni Association of Columbia, as well as a Trustee of that institution, and brought to its development inspiring influences born of his great love for his Alma Mater, infused into their annual reunions an earnestness and at the same time a sprightliness, a brilliancy, which became a tradition that has outlived his term.

He was one of the early Presidents of the U. S. Catholic Historical Society, in whose work he took part with the same earnestness that characterized whatever service he undertook.

As to politics, he held it to be "the duty of every good citizen to become, at some time or other, and to

some extent, an active factor in the working of the governmental machinery," but this he also held might be "more effectually done by those who ask no reward from the powers that be, and no salary from the public treasury for being outspoken and brave." He early held the presidency of the "Young Men's Democratic Club," since known simply as the "Democratic Club"; for many years he was President of the Manhattan Club; no political campaign passed without some contribution from him, in speeches, or letters, or pamphlets, or quiet conferences. In 1876, he was one of the committee of citizens who visited New Orleans in the hopeless endeavor to bring the influence of public opinion to bear upon the "Returning Board," whose fairness or unfairness was to decide the presidential election of that year. In 1892, he led the revolt in his own party, which defeated the attempt to set aside the name of Cleveland as New York's choice for the Presidency, and in 1893 he performed a similar office of successful protest against the elevation of Judge Maynard to the Court of Appeals. He was always an enlightened and consistent Democrat in national politics, and was insistent upon what he called "decent political methods and the subordination of personal interest to the public good." He always declined public office, even on the United States Supreme Bench, with one notable exception—the inconspicuous post of member of the Board of Education of the City of New York, an unsalaried office, in which he labored with unusual zeal.

The Presidency of the Bar Association; his appointment as delegate to Antwerp, in 1878, to aid in the Revision of the Rules of General Average, and as delegate to the International Conference at Berne, in 1880,

to consider the Codification of the Laws of Nations; his lectures on International Law before the Naval War College and the University of Pennsylvania, and the lectures delivered on International Arbitration before the Union League Club, at Chicago, are instances of labor freely undertaken in discharge of the duty which he conceived to be the proper response to the call of public spirit.

To these may be added his witty and spirited reply to the younger Dumas's plea on behalf of a divorce law in France. The law proposed by Deputy Naquet would have permitted divorce upon the bare disagreement of the married couple. This was an assault upon his dearest convictions, and the reply was a defence of his belief.

For throughout his life he was a man of faith; in 1887, he was selected by Columbia College, his Alma Mater, as the orator on the occasion of her Centennial celebration, and in his address gave the warning that

the great complaint of thinking men to-day is, that the rising generation, into whose hands the direction of public affairs must soon fall, has lost or is losing its faith.

If men have really lost the faith which cemented modern society, or if they are in danger of losing it, then is the world face to face with a new peril.

A year later, summing up in the *North American Review* the controversy between Colonel Ingersoll and Dr. Field, in which Mr. Gladstone was led to take part, he deprecated the discussion, which must of necessity be fruitless, as the adversaries did not start from any common postulate, and added this public profession of his faith:

Human reason looks on helpless and silent, when it contemplates the Infinite, the Eternal, the Unknown; the Divine scheme may, by the aid of Faith and Reason combined, be made clear to the minds of men, but the initial obstacle in Mr. Gladstone's way consists in this very requirement that Faith should play a part, and an important one, in the demonstration of revealed truth. This proposition his adversary openly derides.

What, then, is Faith, and what part does it play in the discussion or acceptance of Divine Truth? The sacred volume tells us in no uncertain words that Faith is the credence of things unseen; that we must accept these things as little children; that they are happy who have not asked to see, but have believed.

Laborious student as he was, stored with the history of the past, he was eminently a man of his day; the glories that had gone did not obscure his vivid realization of the achievements of to-day, nor of the splendid opportunities of to-morrow.

He was full of appreciation for the good that surrounds us; he looked for it, he found it, and he aided it.

Free from self-seeking as he was, calls came to him from eminent sources; from an administration adverse to him in politics came the invitation to take part, on behalf of the United States, in the famous controversy as to the respective American and British rights of seal fishing in the Behring Sea; and from another administration, the call to take part in fixing the boundary between Venezuela and British Guiana, at a time when, upon the recognition of that boundary, depended the momentous question of peace or war between Great Britain and the United States.

His professional career was varied in the extreme,—it embraced the criminal bar, admiralty cases, and

patent causes of note, commercial law, and international law. His professional characteristics may best be summed up by borrowing a page from the Memorial read before the Association of the Bar of the City of New York, by Mr. Justice Patterson of the Supreme Court.

From his earliest appearance at the Bar, he disclosed the power of the skilled advocate, and his main relation to the profession during all the years of his activity was that of an advocate, and, as such, he took rank with those who have attained the highest distinction. He had the gift of knowing how to present a case. He could state it with a clearness and an exactness that carried conviction on the simple statement, thereby illustrating the remark of Judge William Fullerton (himself a great trial lawyer), that a case is won, not so much by labored and elaborate argument and eloquence, as by the clearness with which it is put by counsel before the Court or jury. Mr. Coudert was employed in many commercial cases, but his greatest achievements were in the direction of international law. As an international lawyer, his position was pre-eminent.

He did not wish for honors outside of the profession of the law, to which he was devotedly attached. He declined the mission to Russia. He also declined an appointment to the Court of Appeals of New York, and to the Bench of the Supreme Court of the United States. To state his professional status in a few words: He was a sound and learned lawyer; but as an advocate he ranked in the highest class. It is not from the greater profundity of his learning, nor from the possession of talents which did not pertain to other leaders that he is to be distinguished, but there was something unique in everything he did or said that made him a man apart from his peers. There was that in his manner, in the quickness of his perception, in those subtle things which make a deep impression, but never can be accurately defined or described, which, in a

sense, separated him from the other great advocates of his day. There was a wit peculiarly his own, a rapidity of retort, a promptitude to meet every adverse thing presented to him, which no other man possessed; and, added to all, there was a sincerity and truthfulness which never failed to affect either a Court or jury to which he addressed himself. Perhaps there was no man at the Bar whose personal characteristics counted for as much as his. In the trial of a cause, he could excite sympathy or evoke ridicule, or make one of those rapid transitions from seriousness to gayety that are so effective. His power of sarcasm was withering, but it took strong provocation to call it forth. It was not merely the accident of a situation which inspired him, but his control of it that enabled him to display the highest art of advocacy. There were others equal to him in the exhibition of that art, but his method differed from theirs; he created the atmosphere of his case. It must not be inferred from his prominence as an advocate, that he was lacking in what constitutes the real lawyer. He was thoroughly learned and had a sound understanding of the principles of law, but, to repeat, that which was his dominant characteristic was his great and peculiar skill in advocacy. Nevertheless he was an eminently practical business man, capable of conducting great affairs, as was shown by his successful administration, in conjunction with Mr. Charles Francis Adams and Mr. E. Ellery Anderson, as Government Receiver of the Union Pacific Railway.

He was employed in some of the most important civil and criminal cases that came before the courts. In his early years, he, as many other lawyers then did, undertook to practise in the criminal courts. He was counsel for Dr. Gaillardet, the proprietor of the *Courrier des Etats Unis*, in the sensational case of the assault on Mr. Cranston of the New York Hotel—a case which brings to the memory of many the litigation in France between Gaillardet and the elder Dumas, concerning the authorship of the *Tour de Nesle*. During the Civil War, he was associated with Mr.

Reverdy Johnson of Baltimore (one of the foremost lawyers of our time) in the Blockading Cases; and while he was still a young man, he was with Mr. O'Connor, the acknowledged leader of our bar, in the case of *Lahens vs. Fielding*, which involved a very important question of commercial law. He was familiar with the laws of European countries, and that, as before suggested, brought him into contact with foreign consulates and embassies. He prosecuted many extradition cases, and did more than any other man to settle the law relating to the construction of treaties with foreign powers affecting such cases. He was also very successful in patent and trade-mark litigations, and in actions arising under the Constitution and laws of the United States. He was with Mr. James C. Carter and Mr. Edward J. Phelps, of counsel for the United States in the Behring Sea Arbitration, and was called into it only two months before he was required to sail for Paris, where the International Court was held. Mr. Foster, then Secretary of State of the United States, objected to his being retained, declaring that it was impossible for any man at such a late day to familiarize himself with the great mass of testimony which it was necessary to understand in detail; but afterwards he said: "In less than six weeks after Mr. Coudert's retainer, I had occasion to go over the matter with him, and I have not yet recovered from my amazement at the thorough mastery of that complicated case which he had been able to acquire in that incredibly short time." Mr. Coudert was also engaged as a representative of the United States in the Venezuela Boundary controversy. That was the last case of public interest to which he devoted his time; and to that he gave labor, the intensity of which only those who were with him can conceive. There were many other important cases in which he was engaged, such as the Bonnard Will, which involved the legality of a bequest to the Society for the Prevention of Cruelty to Animals; and the Catholic Protectory case, involving the right of the Society for the Prevention of

Cruelty to Children to exercise the power to arrest and commit children to reformatory institutions.

A few words as to the personal characteristics which were peculiarly his own.

Most men exhibit but one phase of character to those who meet them in only one relation of life. The merchant is one thing to his customers, the lawyer one thing to his clients or his opponents, but most show quite another character in their social relations. Any one who met Mr. Coudert in his office, or in the courtroom, at the club, in political consultation, or in the tranquil leisure of his home, recognized the same character, the same man. He was one—complete—entire. His relations with his fellow-men—his conduct, in a word, was based upon elements which could not vary, so that to all, wherever he met them, he presented the same openness to receive impressions from his interlocutor, the same unvarying readiness to hear, to know, to serve, the same quick sympathy which showed an instant comprehension of his hearer's attitude, whether or not he shared it.

Of course the more intimate the intercourse, the further did one penetrate into this mind, open as it was, and the more could one draw from its riches; but to all the mine was ever open.

Gifted with almost intuitive insight, he discovered the weakness of an adversary's case, or of a false statement, with lightning quickness, and this natural gift he supplemented by a subtlety of analysis which tested and confirmed his estimate; possessing a gift of humor which instantly revealed to him whatever was grotesque or amusing in a situation, he relieved the dullest tasks by constant flashes of merriment, or in turn flayed with the lash of his wit, or burned with the flame of his

sarcasm, the shams and pretences that stood in the way of justice. In keen raillery he was a master, yet his innate gentleness prompted him rather to a kindly humor, so that the deft hand made no deeper incision than was requisite, and seldom left any venom in the wound.

Remarkably open to the influences of emotion, he was ever on the watch to prevent its too exuberant manifestation, taking refuge from pathos by unexpected transitions to humor. Yet in the notable Centennial address, at Columbia, he told his grave auditors that

no man need blush because his heart beats high and his speech grows warm for his country, his home, or his faith, nor because a tender chord binds him to the mother that made him what he is. True sentiment is not weakness; it is strength. It makes fragrant the commonplaces of life; it throws a purple mantle over the humblest occupation, and keeps alive the sacred fires in the temple of pure and genuine manhood.

Throughout the many conflicts which are the lot of his profession, and those in which the contests for pure politics and honest government involved him, untiring and merciless as were his assaults upon the wrongs he sought to right, he was hampered by an invincible reluctance to hurt the individual, and even when his indignation was directed against a particular wrongdoer, it seldom long survived the occasion of the attack. To speak of his integrity of motive in every action of his long career, would be an offence to a conscience that never knew what hesitation was between the straight and the crooked path—indeed, never seemed to see any but one path.

His was indeed a blithesome spirit, ever hovering a little above the dulness of our common traffic; a kindly heart, ever a little aloof from the bitterness of daily strife, viewing the failings of his fellows through the softening haze of an enduring sympathy.

The estimate of him given by Mr. Justice Patterson, in the Memorial already quoted from, is so discriminating and so true that it may not inappropriately close this sketch:

Apart from his attainments as a lawyer, Mr. Coudert was a ripe scholar. He delighted in literature, and much of his life was spent in the book companionship of the great authors of ancient and modern times. He had a vast knowledge of general literature. He was master of several languages. In addition to English literature, he was as familiar with that of France and Spain and Germany and Italy, as is a cultured native of any of those countries. His oratorical power was not only evinced in his career at the Bar, but he could make an address in French quite as easily and as readily as in English. What has been referred to as his supreme gift in forensic oratory is not meant to be exclusive; he displayed the same gift on other occasions than the trial and argument of causes. He delivered many addresses, wise, instructive, and eloquent, at educational institutions and other places. Many of us know that on occasions of festivity there were few who approached him in the happiness of his impromptu speeches, none who equalled him in originality, or surpassed him in the grace and exquisite finish of his style. But that which will make him memorable to his friends is the beauty of his personal character. He was the most unselfish of men. He was prompt at all times not only to respond to a call of charity, but to anticipate what could in kindness be done for others. He gave liberally of his substance to every good cause, making no distinction between indi-

viduals or opinions. In political life, he represented the highest type of the independent citizen whose one purpose is to do his whole duty as a citizen and who seeks with discretion and good judgment, and not impulsively or hysterically, to inspire others with the same motive. In society, his wit, his courtesy, and his personal influence, acquired without obtrusiveness and without self-assertion, made him a notable figure.

In his later life, afflicted as he was for several years with a mortal disease, he exhibited a strength of will, resignation, cheerfulness, and patience almost beyond conception. Those of us who knew him well and loved him much, while we pay the highest tribute to his abilities, to his intellectual power, and to his attainments as an eminent lawyer, will remember him for the possession of those higher moral qualities which, after all, are the greatest endowments and adornments of humanity.

It is not an exaggeration to say that Mr. Coudert was complete in every element of manhood. In and of the world, he never failed in his duty. But interested as he was in temporal affairs and although an earnest and eager observer of the great events of our history-making epoch, he was profoundly religious and his life was regulated by the conviction of a personal responsibility hereafter. In these days of rampant materialism, there is not often to be found a character so pure or a faith so simple and strong as his. To his apprehension, the future life was quite as much a reality as the present; and that belief was a consolation and a joy, in a long twilight which to him was that which preceded the rising and not the setting of the sun.

P. F

NEW YORK, July, 1905.

ARBITRATION AND INTERNATIONAL LAW



I

INTERNATIONAL ARBITRATION ¹

WE are gathered here to-day in honor of the founder of our nation, or as we prefer in filial reverence to call him—the father of our country. His fame is his own, his eminence unique. Our jealous love for him will allow no other statue a place on the same pedestal; none other shall stand as a rival in his claim to our devotion. For his light shone in the dark days as the only star that meant hope, his steadfastness kept the tottering young nation from despair, his genius and serenity, his faith and his courage, inspired and strengthened those who were fighting the great fight. But for him and his inspiration, who will venture to say that the freemen of to-day would not be the defeated rebels of the past; who will study the fearful pressure of ever-increasing perils and dispute his claim to our gratitude so long as we remain one people? Overwhelming odds tested his genius, treason wrung his heart, jealousies and rivalries baffled his plans, but the serenity of his soul was undisturbed. As though a ray of divine inspiration had touched his spirit, he looked beyond the trials,

¹ The substance of an address before the Union League Club of Chicago on Washington's birthday, 1897, re-edited with additions from an article in *Harper's Magazine*, November, 1893.

perplexities, and cares of each day and saw the vision which others were blind to enjoy. He could remain firm without the encouragement of victory, he could accept defeat without despondency, he made stepping-stones of disaster, and amazed the world by his fortitude. Benedict Arnold might wound his heart, but even that cruel wound could not open the way to despair. His half-clad and half-fed troops might leave the track of bloody feet in the snows of New Jersey, but the radiant vision never melted from his sight. His powerful enemies might send veteran troops in huge bodies to crush the straggling rebels, but his faith never faltered. The day would surely come when the dreams would become reality, and after great tribulation and trial and suffering a new child would be born into the family of nations—a child destined to become a giant, strong enough to fear no enemy but itself.

We have indeed many great names in our national gallery besides that of Washington. Many men, during the short history of a century, have carved their names in deep letters on the world's story. From the earliest day we have had statesmen who built wisely and well for the country's good: from Adams and Jefferson to the men now living and now striving to carry on the work of the fathers we have had leaders eminent in peace. But yet the universal voice still clamors with the swift instinct of discerning gratitude, "He was first in peace."

The records of our army blaze with glorious traditions. Scott, of Lundy's Lane and Mexico; Grant, of Vicksburg and the Wilderness; Hancock, the Superb; Sherman, Sheridan, McClellan, Thomas, a very host of giants have won immortal fame on hard-

fought fields; but yet the people still proclaim *him* "the first in war." Patriots pure and unselfish, orators eloquent and earnest, judges whose patient research and learning have helped to build our young republic on a solid foundation of law, these have not worked in vain and will live in the memory of generations to come, but yet the pulse of the nation beats with accelerated life when he is mentioned, for he still stands "first in the hearts of his countrymen." No wonder, then, that sixty million people are willing that the restless activities of their daily lives should stop for a day in order that they may wrap themselves up in his memory as in a garment and still look to him for wise counsel. Those who have lived as Washington lived, yield but a part of themselves to the grave. The example, the inspiration, the patriotic endurance and unselfishness, all these are beyond the reach of rust and decay. They teach their lesson even when the centuries have gone, and need no voice to perpetuate their benefactions.

What shall we do this day, to prove the sincerity of our professions? How best can we honor him? Truly the better way would be to look for something wherewith to serve our country, to bring some earnest thought to the great problems which it is our function to solve. To carry fragrant flowers to the tomb of the illustrious dead is indeed a graceful tribute of affection, to pronounce eulogies in their honor is decorous and just; but on each coming day that recalls the birth of Washington to consecrate ourselves anew to the service of our country is surely the noblest way to do him honor. For then we but follow the example of one who pledged life and fortune and sacred honor to the cause of the people, and we may confidently

believe that were his cold lips allowed to move in admonition to the people who love him he would bid them intermit empty pageants and funereal ostentation that they might look to the future and the future's dawn, and seek to make it brighter. If those wise lips could move, do we not know from the teachings of his life that he would warn our people against anger and revenge, that he would teach them the horrors of war and the beauties of peace? Would we not be taught in solemn accents that a great nation may be patient without shame and may with honor forbear to strike? He was first in war and knew its horrors: he was first in peace and knew its beauty. Can we doubt that his blessing would have been, with the Divine benediction, on the peacemakers; can we doubt that the lovers of war would have been thrust aside as enemies of his people? He could tell us that in war the burden of the day and the heat are the people's lot and hard to bear; that the joyousness of peace is the people's opportunity and the laborer's inheritance. Where would he stand, think you, if the key of the Temple of Janus were in his hand, and if he could, by a turn of that key, shut off War's frowning face and silence War's harsh voice?

We may, then, on this day, so especially his own, raise our voice in favor of peace, the handmaid of art, the friend of science, the mother of industry, and the promoter of all good; we may recall to our own minds the claims that she has to our duty, while the true nature of war, in dark and deadly contrast, shorn of its meretricious charm, stands out as the old-time and persistent enemy of the human race.

From the early day when the first man born of

woman slew his brother, war has been the chief occupation of mankind. No condition of the human race has been so debased that the successful warrior has not been the chief among his fellows; no condition has been so exalted that the successful warrior has not stood above his brethren. He has always received the homage of his tribe, his clan, or his country, and been honored in direct proportion to the human lives that he has taken. The patient student whose midnight labors have enriched the world, the inspired artist whose works undying and never old delight generations of men, the poet who imprisons in his verse the beauties of nature and gives a voice to the aspirations of the human race, all these may earn the admiration of mankind, but the military hero has always been the favored object of universal praise. Whether his name be Alexander or Cæsar, Hannibal or Napoleon, Frederic or Charles, he is the easy winner in the competition for fame. Homer himself, the blind bard and master in all the ages, still lives because he was divinely skilled in telling how a Greek hero smote a Trojan warrior to death by hurling at his devoted head a stone which four men of more recent and degenerate times could scarcely lift. Virgil lives because his warrior showed his manhood by seizing another man's land and killing the owner with cruel sword aggravated by eloquent speech. Milton himself might have knocked at the gate of the temple of fame in vain if he had not in sublime music sung of the battle between the Spirits of Light and the Angels of Darkness. Ordinary avocations have always seemed tame and unprofitable when placed by the side of the gorgeously apparelled and superbly mounted hero. He appeals to the imagination and

draws the applause of men and women alike: for the women themselves with their boy baby in their arms rejoice with glittering eyes as they look upon the hero and his horse; they wonder in their gentle hearts whether their own chubby idol may not grow up to kill so many of his brethren that he will live forever in history. What wonder if he, when of full size, may be moved, on slight temptation, to enter the lists, and to strive, at his life's peril, for the great rewards that accompany wholesale and patriotic homicide?

Small wonder, then, that the war superstition should have endured so long, that it should have been so general, that it should have been like the Christian Church, *semper, ubique, omnibus*.

Nor can we wonder that man should have been prone to war, when we consider his nature and his necessities. Like most other animals of creation he is a fighting animal. Whether with his nails and fists or with a club, whether with a stone hatchet or an iron javelin, whether with sword or repeating rifle, he has always been ready and anxious to fight and to kill something or some one. In the evolution from his humble beginnings, man has retained part of his inferior attributes. At times he is a model of strength and courage, then we dub him the lion-hearted; or he is greedy and timid, and with Homer we scorn him as a creature with the eyes of a dog and the heart of a doe; or he is crafty and unscrupulous in his dealings, and we style him a fox. Such are the varieties of his nature that we can always find a prototype for him in the catalogue of beasts. The inferiority of his origin still clings to him, and leaves the atavistic taint thus plainly perceptible. He will only acquire new and higher standards of comparison when unlike the

lion his brother, and the dog his cousin, and the fox his poor relation, he has raised himself to greater heights. When, being a giant with a giant's strength, he forbears, because it is tyrannous, to use it, when passion stands back in respectful obedience to take the commands of justice, when reason speaks first and last and is strong enough to stifle the voice of anger and foolish resentment—when this new era of development has taken the place of the old dispensation, then may we look for new standards of comparison; the ancient ones will no longer fit the situation.

Nor is the transmitted tendency alone to blame. Necessity, born of the primeval curse, suffered no intermission in the work of violence. So long as food was scarce, and could be had only by strenuous exertion, and the struggle for life really meant a hand-to-hand contest with man and beast, so long was it certain that peace could only be bought with submission, and must wear the badge of servitude. The serf or slave must do the bidding of his lord as the price of protection from outside persecutors: the man on horseback did the fighting as his part of the contract. And as he exposed his life with generous courage he became the gentleman, partly because he wielded a sword and still more because he wielded no useful implement. To drive a furrow was the occupation of an inferior, to gladden the face of the earth with a harvest unworthy any but a vassal. Labor meant degradation; it fell only to the lot of those who were born to be the hewers of wood and the drawers of water. Even after Christianity had shed her light upon the dark spots of the world, the many must work for the few; and the few, because they did not work, were credited with a finer clay than that

which made up the producer. But gradually, through the slow evolution of ages, the intelligence of the world was quickened and it was found easier to raise one's own bread than to wrest the bread of another by force of arms. The fashion copied from the locust swarms, of invading the neighboring territory and devouring its fruits being mutual, became inconvenient. To own and to keep a field was found to be as profitable as to roll along in caravans eating up vast territories that became deserts because they would not bloom without labor—and Labor is the twin brother of Security. The gentle example of the early monks was not without its weight. They laid the blessing of industrious hands upon the wilderness and the wilderness fled before them, making way for gardens that gladdened the eye and filled the mouths of the hungry. Wars kept on, sometimes for the pleasure of kings, sometimes because they could not be avoided, but in time fighting became a trade, and the soldier became a professional. The mass of the nation was allowed to do its work—harried, it is true, persecuted, despoiled, outraged, and ruined, sometimes by one side, sometimes by the other, oftener by both; but on the whole labor had some opportunity to carry out its mission of civilization, and the laborer began to have a value.

Herein lies one of the first objections to the claims of war. Killing has become much more expensive than in the old days when the serfs and villeins and canaille counted for so little. They have placed a higher value on themselves and the powers must, willingly or the reverse, accept their own valuation. A well-known historian, with accustomed exaggeration, gravely tells his readers that a nobleman of France in

the ante-Revolution days could not bathe his hands in the blood of more than one peasant on his return from the chase,—a ghastly bit of pleasantry which need not be taken seriously. There is nothing in the history of the French nobility to show that their tastes ran in that direction. But allowing for such extravagances of statement, it is certain that the peasant's life was not then of any appreciable value, financially, to any but himself and his family. To him and them it meant much more than to the lord, who had so many multiplying about him, after the fashion of the poor, that occasional and trifling reductions were of no great moment. Jacques Bonhomme, whether on French or German or English soil, discovered in time how valuable he was, and the consciousness has grown, and what is better still the great have found it out in their turn. It is not of course easy to place a value on human life. Estimates differ according to the subject, the locality, the value of money. We do know, however, that a strong man, with a stout heart and willing hands, is part of the moral and material wealth of the land; we know that to crush out that life with all its actual and potential good is a crime that cries out with the blood that mounts in vapor to the skies, bringing down by its mute but eloquent protest a benediction on all who will strive and pray and work to make such crimes rarer and rarer every day that the sun rises.

In no respect is the evolution of our society more remarkable and more evident than in this one particular, viz., the ever-growing value attached to human life. The swelling buds of the fig-tree do not announce the approach of summer more accurately

than the increased estimate attached to every individual existence testifies to our advancing civilization. No better or higher test can be found of a nation's moral status than this. In China the instinct of self-preservation is weak: there is so little in life worth preserving that the burden is laid down, under a trifling temptation, as a galling encumbrance. The years that followed the Norman Conquest in England present a dark picture of a society in which life for the lower classes, at least, was not worth living. The English wars in France present the same spectacle. Legislation, which is the exponent of a nation's morality and temper, proves that the law-giver himself long held life but cheaply, for the death-penalty, with hideous accompaniments, smote the transgressor even when his sin was venial. What value would a military leader place upon the lives of men who had so little to lose by death? William III. is represented as a humane prince, and yet he violated the Treaty of Nimeguen to engage in a bloody but useless battle with Marshal Luxembourg. He ran no risk, he said, for peace having been declared he would have had to dismiss his troops. What are the pawns good for but to play the game? The long struggle between Spain and Holland, the religious wars in France and other countries of Europe, the chronic condition of general slaughter that was so long accepted as the normal condition of mankind—what do they testify to but the helpless state of men whose life was of little value to others or to themselves?

With a growing consideration for human life comes the element of pity to soften the human heart and guide its emotions to gentler methods. Compassion and sympathy find a fruitful soil in generous natures,

and are well matched with manly courage. War, real old-fashioned war, if I may use the expression, is the negation of kindly impulse. Tenderness to an enemy was an evidence of weakness, or of a hero's temporary aberration. When Horace describes the warrior whose exploits he loved to depict, the model warrior of his day, the fearless son of Thetis, he tells us what he would have done had Fate permitted him to enter Troy:

Heu, nefas, heu!
Nescios fari pueros Achivis
Ureret flammis etiam latentem
Matris in alvo.

No doubt he would have slaughtered his foes, men, women, and children, even babes unborn, with undistinguishing ferocity, and yet have been held the bravest of the brave. For such was war.

So Julius Cæsar, ages after this, when the manners of men had softened, sold the warriors of Gaul into slavery. He sold them by the hundreds and thousands, and paid his debts, or some of them, with the proceeds. This, too, was war, legitimate war, and he might rightfully do this as he might also drag the bravest of his foes behind his triumphal car, leaving him afterwards to die of starvation in a dungeon. There is no evidence that he was the less esteemed for acts like these. Certainly they were not used to sharpen Brutus's dagger.

But Time did not relax his kindly office. War continued to be cruel and wasteful, but glimpses of sunshine lighted up the darkness. Cities were still given to soldiers that they might plunder them, and prisoners were sometimes slain in cold blood. The

natural instinct of destruction broke out as it ever will when uncontrolled, but the tendency has long since been to humanize war, if such inconsistent expressions may properly be used. To prevent unnecessary suffering and to regulate destructive agencies has been the effort of more recent times. To treat prisoners with humanity, to spare noncombatants, to respect private property, these innovations upon the ancient methods testify to the growth of new ideas, and prove that war, as our forefathers understood it, has lost its hold, or at least has adopted new forms. Perhaps the day is not far distant when this same sense of compassion will place war among the relics of a barbarous past, in the company of the thumb-screw, the scavenger's daughter, the torturer's knife, and the fires that burned the witches.

The historian of the late Franco-Prussian war tells us in a few lines that the Germans killed in one battle some twenty thousand brave French soldiers, and that the French on the same day slew and wounded the same number of brave German soldiers, and that the troops on both sides behaved very well. Forty thousand valiant men in one summer's day, the flower of two great countries, mangled to death, in many cases before they could see the instrument of their destruction, powerless many of them to show their courage, except by their patient endurance, standing up as helpless victims before brutal and invisible agencies of death; forty thousand boys and men with unlimited treasures of usefulness to home and country in their strong hands, all gone in a breath, but with the consoling epitaph that they fought well! Did France and Germany, when they read that record, ask themselves if there was no other way to settle imagin-

ary or even real disputes, than this? Did they count the cost and value of these lives and ask themselves whether, in familiar phrase, the game was worth the candle? Or were they satisfied, on both sides the crimson stream, with the reflection that the dead men before they died had fought so well?

If this had been all! But these early hecatombs were but a foretaste of more to come. The new guns continued to do splendid work on both sides. The fame of Herr Krupp and his products grew with the victims of his formidable machinery of death. The needle-gun did fine execution, so did the chassepot, and it is even yet a question with experts which of these two weapons can, under favorable circumstances, kill more men in a given time. Thus one of the objects of the great war failed, and it is not yet definitely ascertained whether the French had better take up with the needle-gun or the Germans with the chassepot. They are both excellent of their kind, and can make more widows and fatherless children in the twinkling of an eye than Satan himself could have dreamed of a century ago.

If this, the most recent of the great wars, failed to settle this important question, what has it settled? The sole difference between the two nations had something to do with the Spanish throne and the Hohenzollern princes, yet in the Treaty of Frankfort we find nothing that affects the succession to that throne, nor any limitation upon that family to accept such royal situations as they may please. But the treaty did in very plain terms provide that Germany should be rewarded with two French provinces, and four thousand million francs of French money. So that for twenty-six years past, France has mourned

over the loss of her two daughters and regretted the ill-use to which her treasury has been put; during the same period Germany has spent these millions over and over again lest the peace be broken by which she keeps her new possessions. And that the circle of peace-loving nations may be complete, they all follow the same impulse and drag the men from the fields, and draw the coin from the treasury, to defend their provinces or, in the coming wreck of things, to secure those that belong to their neighbors. Thus are they all running a mad race to bankruptcy or mutual extermination, to save their honor if it should be assailed, to protect their interests if they should be imperilled, to destroy their neighbors if it should be expedient.

Thus it is that the great Franco-Prussian war settled nothing, but unsettled everything! thus it is that six nations of Europe spend annually eight hundred million dollars lest the peace be broken and keep three million men under arms for fear of war. Thus it is that ten million men are ready to take their designated places on the checkerboard of war as soon as the signal is given. A condition of things absolutely unknown since the world was made; a threat of horrors which the human imagination is powerless to picture. The very magnitude of the indescribable slaughter, confusion, ruin, and desolation impending over the world is the safeguard of humanity; it affords a hope to the man who loves his kind. The time seems near at hand when utter exhaustion will do what sound reason has been powerless to accomplish. The blessings of national bankruptcy have not yet been fully appreciated by the victims of war.

How easily the calamity breeding war between these two great nations might have been avoided may readily

be told. There was in fact no quarrel between them, although a growing jealousy, and a feeling that the continent was too small for the aggrandizement of both. It was not an injury in the past, nor a grievance in the present that divided them into hostile camps; it was the apprehension on the one side that at some future day something might be tolerated by the other which ought to be resented, if it happened to be done. On that other side the confidence, justified by the event, that if it came to hard blows Germany would derive a profit from her expenditure of men and money. In the temper of both there was little room for adjustment, except by friendly intervention. Great Britain made the offer and it is as certain as any event that has not actually become a fact, that a frank understanding through this friendly aid would have dispelled the clouds. The Treaty of 1856 to which both France and Germany were parties was invoked to make intervention possible, but France rested her refusal upon the liberty allowed each party to that instrument to be the sole judge in all matters which involved her dignity. Prussia also declined the golden opportunity and we know the result. France has atoned in the dust of defeat and the humiliation of a dismembered territory for this view of what constitutes a nation's dignity. Her trials and sufferings have not been in vain if the world has learned a lesson from her fate, and if her victor, even in his triumph, has discovered that such triumphs may be too dearly bought.

The Franco-Prussian war has been selected and dwelt upon out of so many other wars, because it is the most recent and the most destructive and the most causeless, of modern times. It is a barren study to

inquire into the respective responsibility of either nation. The warlike instincts of both were aroused and where two men or two million men are anxious for a quarrel the malignant fates to which they listen so readily, are sure to afford the pretext. Like our own War of Secession, the causes were sown many years before the victims fell upon the battlefield. These causes were deep in human nature and in past history. The fruit had grown and it must be plucked. But we are wiser to-day and know that there are other means of reconciling international quarrels than emulation in homicide. Strangely enough we, the youngest among the mighty nations of the world, have been schoolmasters for a hundred years. We have taught the possibility of ruling a great nation by law alone; we have taken the sceptre from kings and given it to judges, with advantage; we have suffered free speech and free writing to be pushed to the verge of lunacy, and yet have kept our freedom. Unconsciously the nations of the world are looking to us and following with hesitating step in the paths that we have trodden. Since we have, at the expense of costly amputation, rid ourselves of the blight of slavery, we stand morally in the very vanguard of civilized mankind; while we have been great enough to fear no army or navy of the world, we have shown our greatness still more conspicuously by our admiration of and devotion to peace. From the earliest days of our history we have condemned war as the enemy of the human race, from the earliest days we have advocated arbitration as the only reasonable method of adjusting disputes.

Over one hundred years ago the young Commonwealth made its first treaty of arbitration to settle the

question of boundaries with Great Britain, and from that day until this she has never hesitated to control her resentments and to hold back the anger of her people, that judgment and not violence might determine the right.

No other compact made by the United States was ever denounced so fiercely and opposed so violently as the Jay Treaty. It was considered by many as a surrender to Great Britain. Unreasoning and unmeasured abuse was heaped upon it by the press, and it was long the chosen weapon of demagogues. This treaty contained a reference to a board of three commissioners who were to determine a question touching our northeastern boundary. The matter in doubt was the line designated by the river St. Croix. It was finally held that the treaty-making powers had by that designation intended to describe the Schoodic River.

The commission was also to determine the amount of compensation due certain citizens of Great Britain, which had been delayed by vexatious laws of some of the States. These laws were clearly in violation of the treaty of peace, but feeling ran so high that argument was silenced. The opposition to this feature of the treaty was especially fierce, but thanks to the firmness of the Government and of the more reasonable element of the people, the arbitration was proceeded with. The case was one of those wherein it was said that our national honor was concerned, and that arbitration involved the loss of national self-respect. It does not seem to-day that the Government forfeited its honor by accepting the decision of a tribunal rather than by resorting to the chances of a war. There were men even in those days who failed to

recognize the logic of war, and refused to accept its verdict as proving anything but that one of the fighting parties was stronger than the other.

It is proper to add that, as a measure to decide disputed rights, this part of the treaty failed, one of the British commissioners, a Mr. McDonald, having persistently exhibited an insolent disregard of the feelings and opinions of his former fellow-subjects. His language was discourteous and offensive. Whether he designed it or not, he drove the American commissioners to a withdrawal. Perhaps this arrogant tone of assumed superiority was not, after the treaty of peace, unusual; perhaps it was not unnatural that the representatives of Great Britain should exhibit some rancor when dealing with men but lately rebels against their sovereign's authority. But fortunately, so far as the establishment of equal relations is concerned, the day was not distant when Andrew Jackson was to settle old scores, in his own fashion, at New Orleans. After this the atmosphere was cleared of much that was unpleasant, and the two nations could deal on equal and friendly terms. Since that day in January, 1815, many questions have arisen between the United States and Great Britain. They have always been settled in the same bloodless and inexpensive way. The indemnity to British subjects, which should have been determined by arbitration under the Jay Treaty, was finally agreed upon diplomatically, and £600,000 paid Great Britain.

Other and most important questions were also submitted to arbitration by the same Jay Treaty. They involved the rights of neutrals, the effect of prize-court decisions, and the rules in regard to contraband of war. Mr. Pinckney, the leading lawyer of his day,

represented the Government of the United States as one of its commissioners. He delivered opinions in the course of the proceedings which, according to Mr. Wheaton, were finished models of judicial eloquence, uniting powerful and comprehensive argument with a copious, pure, and energetic diction. From that time until to-day we have on forty-seven occasions appeared as parties in these international litigations. In every case we have accepted the verdict as fully and freely as though countless bayonets were ready to enforce it, until we have established a practice of justice and fair dealing which has called forth the admiration of the world. Great Britain, to her honor be it said, has not been far behind us in the example that we have given. She, too, has preferred law to violence, and the two great English-speaking nations have seized every opportunity to resort to the forms of justice which appeal to their reason, rather than to indulge those instinctive resentments which are part of man's inferior nature.

The Treaty of Ghent, signed on the 24th of December, 1814, and on its way to the United States when the battle of New Orleans was fought, was equally fruitful in arbitrations. The first question of difference referred was that which involved the title to Passamaquoddy Bay. Curiously enough, the arbitrators were two in number, it being stipulated that if they disagreed they should refer the points of difference to a friendly sovereign or state. They did agree, however, and made their award without foreign assistance.

The same Treaty of Ghent provided for the ascertainment of the northeastern boundary of the United States from the source of the river St. Croix along a

certain described course to the river St. Lawrence. Here the commissioners failed to agree, and submitted their differences to the King of the Belgians, who made an award which both parties consented to ignore, as it did not profess to follow the line marked out in the treaty.

Even a brief notice of the various arbitrations to which the United States have been a party would extend this paper far beyond its intended limits. It may be truly said, arguing from the frequency of instances, that a resort to arbitration has become the practice of the United States whenever its interests or the interests of its citizens clash with those of foreign Powers. Experience has demonstrated the wisdom of these submissions, and has proved that upon the whole they resulted in a just determination of the questions at issue. It may be confidently asserted that the tribunals selected by great nations to pass upon conflicting rights are more likely to formulate just and equitable judgments than to violate the judicial duty imposed upon and accepted by them.

There are few more hopeful signs in the history of arbitration than that between Great Britain and the United States which is known as the Geneva Arbitration. It is the most conspicuous instance of a resort to friendly adjustment where provocation was so great, for our people had indeed suffered under a real and bitter grievance. When the very existence of the nation was in jeopardy, when brother was arrayed against brother, and the whole fabric of our Government was tottering to possible ruin, a friendly nation connived at efforts of the Union's enemies, and indirectly aided in their attempts at our disruption.

Great Britain, by her conduct during the most trying

period of the national history, had created general irritation among the people of the United States. She had sympathized almost openly with the rebellion, and had permitted her ports to be used for building and fitting out privateers. The commerce of the North had been driven from the seas, valuable property destroyed, and material encouragement offered the States in rebellion. The sensitiveness with which this unfriendly action, and still more unfriendly inaction, on the part of Great Britain was regarded threatened to burst into open resentment. The circumstances were such as to make the efforts of the peacemaker equally delicate and difficult. It is to the credit of President Grant that, warrior as he was, he preferred this peaceful method of solving international questions to the lottery of war. His words do him great honor, and should be kept in lasting remembrance by his people:

Though I have been trained as a soldier, and have participated in many battles, there never was a time when, in my opinion, some way could not have been found to prevent the drawing of the sword. I look forward to an epoch when a court recognized by all nations will settle international differences instead of keeping large standing armies as they do in Europe.

If there is anything more difficult to forgive than injury we have suffered, it is the injury that we have inflicted. Both nations therefore had much to forgive and much cause for resentment, but they mastered the temptation, and the result was the great lesson of the century.

The latest instance of an arbitration between great nations is that at Paris between the United States

and Great Britain. The question to be settled involved the right of the United States to protect its seal interests in the Bering Sea and the North Pacific Ocean. That the seals resort to the territory of the United States for the purpose of breeding and suckling was practically conceded, as was the further fact that unrestricted pelagic sealing (*i. e.*, killing at sea), being by its very nature indiscriminating, tends to exterminate the herd. Both parties conceded that this valuable race of animals was in danger of rapid extinction. The chief point of difference between the two nations arose out of the *claim of property* made by the United States and denied by Great Britain. This assertion and denial threatened to produce serious complications. The United States began by seizing the ships that were engaged in the depredations complained of, and in some instances caused them to be condemned under a statute prohibiting seal-killing at sea; but in view of the earnest protest and remonstrance of Great Britain it desisted from this summary course and consented to arbitration. What would have resulted from a persistent assertion of its rights by force, on the part of the United States, is of course a matter of conjecture. Mr. Phelps, Minister at the Court of St. James, was in favor of vigorous measures, and urged the continuation of the only course which, in his judgment, was consistent with self-respect. He felt and expressed entire confidence that Great Britain, knowing that she was in the wrong, would never go to war in defiance of the impregnable moral grounds on which the claims of the United States were based. This view was entitled to special consideration, emanating as it did from a profound jurist who had also proved himself an exceptionally skilful diplomat.

But there certainly was some danger that the seizure of British vessels in the open sea might lead to a disturbance of the friendly relations between the two great Powers, and that danger was not to be incurred except under circumstances of exceptional gravity. War between two such Powers would set the hand on the dial far back and would deal a severe blow to those who longed for peace and good-will among men. If the two leading Anglo-Saxon nations cannot control their temper and their judgment, if they cannot settle their disputes by rational processes, where is the hope of the world?

This made the Bering Sea controversy and its submission to arbitration especially significant and important. In proportion as the causes of irritation are more marked, and the appeal to national pride more stirring, just in that proportion is arbitration more difficult to secure, and more satisfactory when secured. The lesson is worth much to the world when a nation refuses to draw its sword under real provocation and trusts its cause to a tribunal of wise and just men.

How such a tribunal should be constituted has been much discussed by writers. The fashion of referring international controversies to sovereigns has lost favor, and naturally, for the sovereign delegates others, of his own selection, to do the work of studying and practically deciding the case. Dr. Francis Lieber expresses the opinion that the best tribunal is the law faculty of some foreign university, or a tribunal of jurisconsults whose vast knowledge and unswerving fidelity to justice and to legal truth had earned them an international reputation. To such a court as is thus described the Bering Sea controversy was submitted. The United States claimed, with great confidence,

that its cause was just; that it was based upon recognized principles of international law, upon sound rules of dealing as between nations, upon moral necessities long since admitted by the civilized world.

The decision of the high tribunal in the Bering Sea controversy, while upholding the resistance of Great Britain to certain claims of exclusive right in the Bering Sea, has framed such regulations as practically put an end to pelagic slaughter and its destructive results. The United States reap the substantial fruits of the controversy, which was only initiated to preserve and protect the race of seals.

Taking the arbitration as a whole, it must afford a singularly gratifying spectacle to the haters of war. Two great nations have entered into a friendly discussion before an enlightened court to settle a dispute which threatened to produce an armed conflict. The forms of law, precious to both nations, have been carefully observed by court and counsel; an earnest desire to bring out all the facts and all the arguments fairly to be based upon such facts has been apparent. The tribunal itself was admirably constituted. It was a *judicial* body composed of jurists of fame deservedly bestowed. The indirect results of this submission to peaceful methods must far outweigh in importance the immediate advantages which either party may claim to have received. When an honorable and satisfactory adjustment of international disputes is shown to be easy and economical by arbitration, war seems to be not only cruel but ridiculous.

Especial praise should be awarded to Baron de Courcel, the presiding officer of the court. His unvarying tact, his dignified and judicial bearing, his quick apprehension, and manifest anxiety to be just,

entitle him to a high place in the respect of both nations. If it be true, as he himself expressed it, that "every international arbitration renders war less probable," he may well enjoy the satisfaction of knowing that he and his distinguished associates have made mankind their debtor.

Since these great object-lessons in international arbitration, it is idle to talk of insurmountable obstacles in the way of promoting peace. If the United States could condone the depredations of the *Alabama*, and Great Britain could pay for them as she did, arbitration must be easy. But it was never so easy as to-day. All the civilization of the age is against war, and its intelligence and learning, its science and its art, its greater tenderness for human life, its love of the beautiful, its commercial interests, all these are co-operating in harmonious solicitude to drive war from the face of the earth. The world knows too much to put its faith in war. What has war ever done to settle great questions? I speak not of defensive wars, of resistance to unjust aggression, for these may no more be condemned than the effort that the peaceful traveller makes to resist the banditti who look to his purse. Nations may be broken up and divided as in the case of the early colonies and Great Britain, and of the several American republics and Spain; war then seems unavoidable, for the bonds that have become oppressive can only be rent by force. I speak of war as a conflict between two independent nations, striving to obtain satisfaction for wounded honor, or to settle a boundary question, or to collect a financial claim. This procedure as a means of obtaining justice is fast becoming obsolete. And how should it be otherwise? Montaigne has truly said that "the envy or spite of

one single man, his pleasure, or a fit of domestic jealousy, causes that ought not to excite two fishwives to scratch one another's faces—these have been causes enough for great trouble." But despotic rulers with this power for mischief are fortunately rare. The people must be consulted about war and have a voice on the subject.

To us of America the problem may seem easier than to any other nation in the world, because we have in permanent session a tribunal of arbitration which we call the Supreme Court of the United States. Sovereign States which have retained all their sovereignty that was consistent with "a more perfect union" appear before that court and settle their differences, their boundaries, and their respective claims as easily, and acquiesce as readily in the result, as private individuals. Iowa sues Illinois much as A sues B—takes out process, procures depositions, submits points of facts and of law, and leaves the rest to the court. Making due allowance for the distinction between the jurisdiction of this national court, dealing with members of the Union, and a court sitting to decide the rights of independent nations, we may still claim that the analogy between the two is marked enough to deserve consideration.

In 1876, even the bitterness of a contested election could not startle our people from their propriety. They made a court to suit the emergency; both sides submitted arguments and proofs to the tribunal; they accepted the result, and gave one of the most triumphant examples in the history of the world of the extent to which a free people may forbear in accepting the forms of law for the preservation of peace.

As long ago as 1848 the Treaty of Guadalupe Hidalgo

was made between the United States and Mexico, providing for arbitration as a general obligation on the part of the two countries.

If, unhappily, any disagreement should hereafter arise between the governments of the two republics, whether with respect to the interpretation of any stipulation in the treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves, using for this end mutual representations and specific negotiations. And if by these means they should not be enabled to come to some agreement, a resort shall not on this account be had to reprisals, aggression, or hostility of any kind by the one republic against the other until the government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborhood, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation.

Public men have officially come forward and joined hands to condemn war. The Parliamentary League, so called, is gaining constant acquisition to its membership. Only a few years ago forty members of the French and English parliaments came together in Paris as "friends of peace." The outlook was not encouraging. All Europe was, as it now is, armed to the teeth, and war seemed imminent. In October, 1891, the congress was held at Rome, and in four years the forty had reached fourteen hundred, all of them occupying a more or less conspicuous position in public life.

A still nearer approach than the United States Supreme Court to a permanent international tribunal is the Federal Court, which settles all disputes arising between the various cantons of Switzerland. These cantons, it will be remembered, are different in blood, customs, and jurisprudence. They are French, and governed by the French code; German, and governed by the German law; or Italian, in which last named the legislation and jurisprudence of Italy have been followed. And yet for centuries these states have submitted their controversies to a court which may be traced back through various modifications to the fourteenth century. So near an approach to the great court which sits in the philosopher's dreamland must give encouragement to those who abhor war as a crime and deride it as an absurdity. Calvo¹ claims that the Swiss system is a demonstration that the idea of a permanent tribunal for deciding controversies between people of different races is not the dream of a visionary, but quite practicable.

There is no more formidable obstacle to causeless international conflict than the newspaper, provided the soldier can read it, which in our country at least he generally can do. True, the newspaper sometimes indulges for temporary purposes in wordy effervescence, and seeks to stimulate the fighting spirit for no wholesome end, but upon the whole the influence of the press is an influence of peace. The press realizes the value of international harmony from the standpoint of commerce, and on grave occasions is ready to advise against violence, to deprecate rashness, and to prefer reasonable settlement to violent experiment.

A free press is the foe of war, not only when it raises

¹ Calvo, iii., 477.

its voice directly against violence between nations, but when it faithfully portrays the horrors that were never realized until men were brought face to face with their existence. It has done much to prevent war by bringing vivid pictures of its horrors into every home, by tearing off some of its fine but false pretences, by showing its ghastliness and ruthless destruction, as they were never shown before. Butchery unadorned is not a pleasant subject of contemplation. The war correspondent has been an apostle of peace; he has made his pen pictures preach an unconscious sermon to his readers. The pity of it never struck the looker-on as it does to-day. We generally saw war at a great distance, as through a glass, darkly, and heard but a vague and uncertain echo of the turmoil.

The man who writes from the bloody battlefield, and pictures with his pen the scenes which he has witnessed, does more to impress the masses with the uselessness and barbarity of war than the most eloquent preacher who ever thundered against horrors that he had not himself looked upon with his own eyes. Our fathers could not put their fingers into the wounds of war and touch them with their hands, as we may do without leaving our peaceful pursuits. When Napoleon sent off his couriers to announce to his people that he had carried a new victory to the nation's credit, that he had captured thousands of prisoners and hundreds of flags, and dated his bulletins from Vienna, Berlin, Madrid, or Moscow, the people shouted for joy, the cannons roared, the *Te Deums* went up from Notre Dame, and little thought was given to the heartache of the mother who waited so anxiously, yearning through long weeks and months to know whether the brave boy that she loved had given his

life with so many others for another feast of glory. The Grand Army Bulletin could not wait to give details; it was enough for it to say that victory had been faithful, and that Austerlitz, Jena, Eylau, were to shine as new constellations in the firmament of national victories. To achieve these things men must die. "I have grown up on the field of battle," said Napoleon to Metternich. "A man like me cares little for the lives of a million men." Perhaps but for this absence of pity, this indifference to human life, Waterloo might not have followed so closely upon Austerlitz, and Sedan might not have challenged Jena's triumph.

Still another enemy of war is the growing influence of woman. She has a voice, and it must be hearkened to. If her heart must break, she will not allow it to break in unnoticed silence. She has taken her place in literature, art, science, journalism. That influence is all in favor of peace. The Amazon is an extinct species. Joan of Arc clad in armor and leading men into battle is confined to the stage; besides, her sad fate is no encouragement to female belligerency; the fragrance of her sweet life and hapless end must suffice; she cannot be a model for modern woman. The rôle of the man has been to make war or peace, as he elected; the part of the woman to send husband, lover, son to gain glory or find death, while she watched, wept, and prayed. This distribution of parts was no doubt inevitable; but as hers was entirely uncompensated, she may well be excused if in the future she protests against conflicts in which she pays a great price and receives no reward.

War, logically speaking, is an anachronism. It belongs to other ages and other forms of civilization than those in and under which we live. Its brutality,

cruelty, and injustice jar against the humanizing tendencies of the nineteenth century. We are growing accustomed to look elsewhere than to the hazards of the battlefield for the solution of international problems, and have learned that there are better and cheaper methods of settling controversies than those which depend upon heavy artillery and needle-guns. Common schools, telegraphs, railroads, and universal suffrage are the handmaids of peace; they are the enemies of war. The *ultima ratio* of kings was based upon a blind and superstitious reverence for the royal majesty and its commands. But armies are no longer filled with unthinking and helpless creatures that killed, burned, ravaged, and destroyed because they were directed to do these things; these men constituted, in Napoleonic phrase, the *chair à canon*, or cannon food, and fed the roaring monster until it was gorged. But much of this is obsolete. Men want to know the reason for everything that they are called upon to do, and the newspaper gives it to them daily. A great monarch might say, "I am the state," and tell the truth when he said it. Who dreamed to dispute his commands or to question his justice? Surely not the peasant and laborer whose wretched condition made the army a refuge where bread at least was dealt out, although there were exceptions even to this. Coarse as was the food that he ate, he did not always eat his fill, and he fought and hungered while the farm lay fallow, and the wife and children wore out their lives in the futile effort to do his work. He fought and he fought bravely, he died unnoticed or returned unrewarded, until the time arrived for his son to take his place, and thus in never-ending monotony he fulfilled his destiny, for the glory of others, and at his own expense.

The heinousness of the crime of causeless war was never fully realized until it was felt that this was not the only means of vindicating national rights. It is possible to settle questions without violating all the commandments; it is not impossible to preserve national self-respect without the sacrifice of human victims. The boy who has grown into manhood after passing through years of schooling is soon taught these things, and learns that he himself has a certain importance. He may be only a pawn on the chess-board, but pawns may check the king. He may overrate but certainly does not underestimate his importance, and readily learns that he has a real if uncertain cash value. He does not care of his own free choice to shoulder a musket, even of the latest pattern, unless it is plain to him that the honor of his country is at stake. He is above all things practical. He will lay down his life if needs be, as bravely as the offshoot of any other race, but he will not be contented with a vague formula; he must have a reason for leaving his workshop or his farm to put on a uniform, and looks to the press to tell him what the quarrel is about. He has been told and taught and is ready to believe that quarrels can be settled by judges as well where millions of men are concerned on each side, as where single litigants are engaged in vindicating their respective rights.

He is practical and therefore wants a real solution. He wants a decision that settles something. He knows that wise and honest men who have carefully studied the evidence are more likely to reach the requirements of justice than armed troops however brave, with their commanders however patriotic. The wisest and best of the soldiers whom he has

known have admonished him against war. "War is hell," said General Sherman, and this monosyllabic description can scarcely be improved in brevity and truth. He had seen it at its worst, and had emerged from it one of the idols of his people, but he knew, because he had seen, that the horrors that we can only imagine as the accompaniments of perdition may alone give an adequate idea of the horrors of real war.

Such authorities as these will more than outweigh the few exceptions which we find to pat war on the back as a blessing, and to praise it as a divine agency for good. Hegel, for instance, says that war is not an absolute evil, and that perpetual peace would be a condition of moral stagnation for the nations. De Maistre, adopting a higher tone, declares that war is a divine fact, an instrument of the Kingdom of Providence destined to the necessary expiation of the crimes of men. The soldier and the executioner, he thinks, are both professional killers who should be equally honored. It is a pity that such writers of paradox cannot find a less ghastly subject for the exercise of their unconscious humor. The most conspicuous advocate of war in modern times, however, is Marshal Moltke. "War," he says, "enters into the views and designs of Providence; it is a means for the people worthy of fulfilling their object on earth, a divine mission not to fall into decay and to retemper the edge of their manhood." A curious way indeed of avoiding decadence, and an expensive one. Was it necessary to slaughter the 40,000 unfortunate men on the field at Vionville and St. Privat in order to retemper the manhood of these two great nations? How many soldiers should be slain, and how many villages burned, and how many provinces devastated

before the highest culture is reached? When and how can we be certain that decadence is stayed, and that progress requires no further killing of men? Who shall furnish periodical and plausible pretexts for war to be applied when the necessity arrives, not that Justice may have her sway, but that men may not be pampered into effeminacy by the charms of peace? We might ask this great warrior when he discovered, and how, that war entered into the views and designs of Providence; what winged messenger of the Prince of Peace vouchsafed for his private illumination the fearful fact that war was permitted to nations worthy of fulfilling upon earth a divine mission, to preserve them from decay. If we can feel quite sure that this accomplished soldier really was inspired to express such appalling sentiments, we must despair of the future of the world. Then, indeed, may Peace, veiling her tear-stained face, fall at the feet of the great warriors, proclaim her abdication, and yield her sweet offices to the demands of bloody war.

No, neither Marshal Moltke, nor others who may take the same dark view of the tendencies of the human race, can stem the current and beat down the rising tide. The world has supped full of horrors and slaughter and needless destruction for thousands of years and when the dawn appears on the horizon we may be assured that the sunshine is about to rise; we know that the storm is over when the sky is red.

It is true that the more humane civilization of the age has sought to mitigate the cruelties inseparable from a condition of war. The victorious army no longer turns its prisoners into food. The vanquished are no longer sold as slaves for the enrichment of the captors; they are treated with such humanity as the

situation of the parties permits. But nevertheless the horrors and destruction incident to modern warfare are ascending in a rapidly increasing ratio. The ingenuity of man is nowhere more manifest than where he devises means for dealing death upon his fellows. While, as we have seen, there may be a rational difference of opinion as to the comparative merits of the chassepot and the needle-gun, the race has not stopped. One nation has devised a new rifle which is spoken of with delight and admiration by experts; it is a gem as an agent of speedy annihilation. The bullet has emerged from the elementary condition as a simple perforator of the human organs, for it has been taught, while it breaks the bone, at the same time to pulverize it, so that the great advantage is presented by its use not only of temporarily disabling the smitten limb, but of insuring against recovery of the victim, the superadded benefit of compulsory amputation being among the rewards of the new plan. Besides, the bullet itself is encased in nickel plate, thus affording in its improved appearance an artistic presentation of added capacity for mischief which deserves admiration and praise, if it be inspired by Providence to prevent national decay.

This for the smaller weapon which can only deal death at the rate of three or four men to one bullet. But the main progress seems to be in the production of the huge monster whose powers to mow down columns of men like blades of grass have been greatly increased. The new Canet gun which appears to have been adopted as a peace-preserver by the French Government will throw a shell loaded with 300 bullets five times a minute with a range of seven thousand yards. But Herr Krupp is not to be undone by these Gallic

efforts to avoid war, and it is mysteriously said that he has contributed to the good cause a still more eloquent advocate of German philanthropy. It is suggested in addition that such improvement in armaments will require additions to the army, which will be increased in France by 75,000 men, naturally necessitating the same addition of guardians of the peace on the side of Germany. We are thus rapidly approaching the hitherto unknown condition where huge armies will destroy each other before either is visible to the other save through a telescope. Perhaps this intolerable progress is to be the means, in the designs of Providence, of averting a conflict which no man can contemplate without the feeling that a new vista of horrors may teach the world, at any moment, that the wars of the past have been as the games of children.

If the advocates of war will only ponder upon these things, and try to bring before the eye of their fancy an image of the possibilities which they are striving to turn into probabilities, they may conclude that the blood-letting which they so cheerfully advocate may not be regulated according to hygienic principles. The life-blood of a nation is too precious to be left to the mercy of experts, who are experts only in shedding it, but who are not always able to stop the flow of the life-giving fluid after they have started it. For war is cruel and wasteful at its best, and we may expect to see it at its worst when it next breaks out; what that worst may be imagination cannot picture, for there is nothing in the records of the past to afford facilities of comparison.

To-day the United States and Great Britain are striving to crown the glories of this dying century with something better and greater than the world has seen.

It is proposed to abolish homicide as a test of international right, by submitting causes of dispute to the calm judgment of wise men; a solution so simple and so economical that it requires great ingenuity to assail it with plausible reasons. All concede that in theory the plan is admirable, that in practice on a limited scale it has proved of priceless value, that it is infinitely more likely to produce rational results than the only other alternative, viz.: resort to war.

But, say the objectors, what if our national honor should become involved? A momentous question indeed, and one absolutely impossible of reply, until we are told what is this national honor, wherein it lies, and how best it may be asserted. In what one of our many differences with Great Britain has our honor become so involved that the delicacy of its constitution required a prompt and vigorous régime of blood and iron? And yet we have had hot and long disputes where honor might have been called to the front by either nation, and made the pretence for a refusal to arbitrate. A nation's honor, I would venture to say, is never compromised by temperance nor injured by forbearance. A nation's honor is not served by rash counsels, nor by violent impulses recklessly indulged in. It is indeed a frail and delicate possession, if it cannot live in an atmosphere of peace, it is a dangerous one if it is tarnished by friendly discussion and a disposition to hearken to the voice of justice. National honor may perhaps shine all the brighter when a great nation is slow to admit that her just dignity may be imperilled by the act of others. The honor of a nation is in her keeping, not in that of her neighbors; it cannot be lost save by her own act.

To preserve her honor should be her main object and purpose, but she should not readily believe those who tell her that by hard blows alone may its integrity be protected. A nation's honor consists in fidelity to her engagements, in carrying out her contracts in spirit as in the letter, in paying her just debts, in respecting the rights of others, in promoting the welfare of her people, in the encouragement of truth, in teaching obedience to the law, in cultivating honorable peace with the world. How can our national honor be so grievously invaded that there can be no room for remonstrance, no time for discussion, no opportunity allowed the aggressor for amendment? Spain within a few years offended Germany most grievously, and it was said insulted her flag, but Germany nevertheless arbitrated with Spain, and allowed the Pope to decide the question at issue. Has Germany's honor suffered thereby? We seized British ships in the Bering Sea and condemned them in our ports, a most grievous insult according to the sensitive and self-constituted custodians of British honor; but Great Britain adopted peaceful counsels, and a wise court heard, examined, and decided the case without any apparent injury to British honor. Why is war a more reliable defender of our national honor than arbitration? Readiness to fight may serve to prove that our country is not afraid to fight, but the world knows that to-day and needs no proof. War may prove that we have a gallant people behind our Government ready to spend life and fortune for a good cause, but the world knows that of old. Why renew that proof? War may show that our financial resources are practically inexhaustible, and that we are able to build and buy the most approved engines of destruction,

but that, too, is of public notoriety. Let us not call witnesses where the facts are conceded, nor embark upon expensive methods to satisfy the world of what the world is already quite convinced. As with men honor often means pride unembarrassed by scruples, so it may be with a nation. The standard with men differs according to latitude and surroundings, to social institutions and traditions, to civilization, religion, and many things. Men resort to the shotgun, the revolver, the bowie knife, or the club to heal or defend their honor, and lose it as often as they mend it. The effort of civilization has been for years to teach them that violence is not the safest champion of offended dignity, that the methods of the bravo, the manners of the ruffian, or the tyranny of the bully may best be dealt with by a firm court and an officer of the law. Why should nations be prompt to seek redress through force, so long as reason may be heard and reason's voice is still respected?

Bluster with nations as with individuals is dying out. It is heard at times, but its voice squeaks, and shows senility. It cannot as of old arouse a nation into unthinking wrath nor drive it from its propriety. The wisdom and the experience of the world are against it.

It was a favorite saying of Napoleon (he had borrowed it from Montesquieu), that no man is strong enough to fight against *la nature des choses* (the nature of things). It will get the best of him in the end, for the moral forces of nature are based on immutable and eternal principles; they will not be put down. They may be delayed, but they cannot be stayed.

The day has gone by when honorable preferment could only be gained in war. The splendid triumphs

of peace are winning over the heart of man from the glories of war. Perhaps the boy of to-day, by the time he has cast his first vote, may think it as well to be an Edison as a Napoleon, a Pasteur as a Wellington, a Franklin as a Moltke, to build as to destroy, to save as to kill, to love as to hate. To labor for his bread and to earn it by the sweat of his face is the curse, mercifully transformed into a blessing, but labor must and shall enjoy its rewards in peace. The divine Founder of the Christian Church gave His peace and left His peace to those who followed Him, as a priceless gift; now His followers with insistent prayer that has been growing into irresistible volume demand of their rulers that this inheritance shall not be taken from them on vain and shallow pretexts. Order has become the watchword of a growing civilization and order means the law, not the law of violence, not the law facetiously called the law of war—that is the law of lawlessness—but the law which grows from a living sense of justice, which depends upon reason, which invokes patience.

The war of the future shall be the bloodless war of right against wrong, of good against evil, of truth against falsehood. We have had bitter and bloody wars called wars of religion, but the universal rule is to-day toleration and charity in the realm of conscience; can we, shall we, in the light of nineteen centuries of Christianity, ever see such wars again? We have had great wars of succession, but the successions of kings and presidents are settled by law, and the claim to rule as of divine right, if ever made, causes a smile of courteous commiseration. Wars of conquest have devastated the world, but who seeks to-day to remove his neighbor's landmark? The

grave causes of war that made deadly conflicts as inevitable as they were frequent have died out.

The old element of personal prowess too is fast disappearing. Fancy the grim veterans of Napoleon's Old Guard as with steady eye and steady step they marched with glistening bayonets to decide the day, cool as on a holiday parade, ready to die for their great leader's fame, knowing but one duty and doing it—fancy them to-day with modern weapons mocking their courage and bidding them to die before they could reach their foe; fancy our gallant Sheridan with his Winchester braves charging a battery of guns that kill at five miles' distance or meeting infantry that was dealing out death at such a rate that personal gallantry meant only patient endurance of certain death. Let those who talk of war and its glories ponder upon these things and remember to what they would condemn the men whom they so flippantly enlist for the battles of the future. The prejudices, caprices, errors, and passions of men may defer the hour of triumph, but come it must; the constant tendency of man is towards peace, as soon as he emerges from the primitive condition wherein he most closely resembles the inferior tenants of the earth. Individually he longs for rest and the enjoyment of life. He undergoes hardship that he may have security and ease. Two thousand years ago the Roman poet expressed it in his graceful verse that can only be inadequately transferred into English:

Caught in the wild Ægean Seas
The sailor bends to heaven for ease,
While clouds the fair moon's lustre hide
And not a star his course to guide.
Furious in war the Thracian prays,

The quivered Mede, for ease, for ease,
A blessing never to be sold,
For gems, for purple, or for gold.

The good fight of peace, and for peace, is fairly won.
Honor to those who have achieved it, and shown themselves the friends of the human race. The great consummation may be deferred, but come it will. As Hamlet said of death: "If it be now, 't is not to come; if it be not to come, it will be now; if it be not now, *yet it will come.*"





II

THE ANGLO-AMERICAN ARBITRATION TREATY ¹

A TREATY of peace has heretofore been the postscript of a war. Nations fought their way to such a treaty through more or less sacrifice of life and destruction of property. As a rule physical and financial exhaustion was a condition precedent to the establishment of friendly relations on a permanent basis. One nation had to be beaten into something like insensibility before the two could unite in the necessary declarations of good-will and the customary bonds to keep the peace. Tradition had ordained that a nation's honor required to be lubricated with blood in order to be kept in good working condition. Both of the conflicting nations usually assured the other nations that were looking on, of the imperative necessity under which the honor of each was placed to do some fighting to keep it fresh and bright. When a sufficient number of men had been slaughtered, and a proper number of towns had been burned and plundered, and when the treasury of either or both was empty, Honor smiled once more with restored cheerfulness, made her graceful obeisance, and retired from the scene, leaving the victor to have his way. Honor, national honor, has been a priceless possession,

¹ From *The Forum*, March, 1897.

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but a very expensive one to keep; the more expensive because of its uncertain character, its vague definition, and its unreasonable demands. One thing is certain: that, when the leaders of a nation have concluded that the honor of the country is at stake, some one must be attacked and, if possible, destroyed. The salutary process of a bloody baptism can alone renovate and preserve this delicate and susceptible quality of a nation's constitution.

And now come before the world two quiet gentlemen, without any swords by their sides or revolvers in their belts, who venture to say that the old practice is really obsolete and perhaps a little foolish; that war is very expensive, very cruel, and quite unphilosophical; that perhaps it were better to make the peace before the war than after. They suggest that the experiment is worth trying, and may be tried without apparent danger; for, if it should fail, there would still be plenty of time to raise armies, to build fleets, to bombard ports, to blow up ironclads, to make homes desolate, to break mothers' hearts, and to lay heavy burdens of debt upon generations to come. It may be that the instinct of destruction that lies so near the surface of human nature will break out in spite of all such efforts; possibly atavism may be too strong, and the lion, the wolf, the hyena, and the jackal may still have their way; but an inexpensive attempt to save much money, much human life, much property, and to avoid incalculable suffering is worth the effort. So the two gentlemen, who assured each other of their mutual consideration until they united in the proposed Treaty of Arbitration which is now before our Senate, deserve respect and the thanks of the world for their good intentions. It is barely

possible that they are acting in advance of their generation, and that their efforts for the welfare of mankind may be premature; but their credit will be none the less in the years to come. Their work is as certain to bring forth good fruit as the seed that falls on rich soil and receives the rains from heaven is sure to germinate and bud and flower. Reason must triumph in the end. Blind men in broad daylight may insist that all is darkness; but that is the result of their infirmity. The light is there none the less.

It is no diminution of the merit of the chief actors in the Arbitration Treaty that all the conditions were in their favor. Arbitration was no novelty when they undertook their task of putting another brake on the savagery of men. The fashion of submitting international differences to the deliberate judgment of wise men had become so general as almost to create a practice. It is so cheap that it commends itself to the commercial instinct of the world; so humane that it strikes a responsive chord in the hearts of all those who love their kind. Its assimilation to the legal methods that serve men in their private disputes appeals to the reason of all who prefer to abide by law rather than resort to the shotgun or the revolver. Nor can it be denied that the majority of those who do the fighting are quite willing to forego their chances of military preferment and renown, if the interests and honor of their country do not require their assumption of a soldier's duties. In brief, the moral forces of the day are in favor of a peaceful solution of international disputes, where such a solution is possible. Boys cannot go to the common schools without learning something about war—its uncertainties, its horrors, and its dangers. While their early instincts

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lead them to dream of martial renown as the *summum bonum* of life, they do not in their youthful dreams make much distinction between Alexander the Great and Captain Kidd. But they are content, as a rule, when they have donned the *toga virilis*, that is, outgrown knickerbockers, to become and remain quiet and hard-working citizens. All this without prejudice to a manly disposition to make a sacrifice of home and of comfort when the country calls; but then it *is* a sacrifice and not a choice.

Arbitration, in a word, has become one of the accepted dogmas of our national creed. Our nineteenth-century civilization is not content with such mitigations as a growing humanity claims to have introduced into the conduct of war. War is, at the best, cruel and brutal: it is the negation of law and the assertion of force in the place of law. Voltaire was not so far wrong when he said:

The laws of peace I understand well enough,—they consist in keeping our word and leaving our neighbor to enjoy the rights which nature has given him. But as for the laws of war I do not know what they are. The code of homicide seems to me a strange inconsistency. I hope that we may soon be provided with the jurisprudence of highway robbery.

That arbitration has satisfactorily stood the test of experiment, statistics demonstrate. The United States Government has entered into forty-seven agreements for international arbitration—not to speak of the erection by it of thirteen tribunals under its own laws to determine the validity of international claims. A simple explanation this of the fact that we have a small standing army of 25,000 men and do not know

to-day what war taxation means. We pay one hundred and fifty millions a year, it is true, to old soldiers who have done their fighting well and in a good cause; but this is manifestly better than taking the same money to keep young men out of the workshop, the field, or the factory, to prevent war by making it easy.

In Europe, too, arbitration has become a familiar visitor at the palaces of kings, and has become so popular a guest that her services are in constant and growing demand. What our example to-day may do, what splendid possibilities it opens to the world, what burdens it promises to remove from the overworked and overtaxed people, no imagination can describe. It may not,—cannot,—in a day or a century, lay at rest the spirit of violence and aggression; but it may teach a lesson that will make the world happier and better every day that it is studied.

The sole difference between the Olney-Salisbury Treaty and the half-hundred that we have already had, lies in the fact that in other cases specific instances of controversy were disposed of: to-day we are provided with machinery to adjudicate every dispute that may arise. Why the formulas and procedure should be renewed and readjusted fifty times or one hundred times to fit cases at intervals, rather than to cover all cases by a careful and intelligent scheme of practice, is not very clear. The only possible—I shall not say plausible—ground of objection must be that a controversy may arise of such a character as to make arbitration less desirable than blows. If our national honor were concerned, it is gravely alleged, no aspersion on that delicate organ could be treated otherwise than with bombs and guns.

A great nation cannot talk, when her honor is assailed; action must be then prompt and energetic. Speech was not given to men to discuss questions where honor is concerned. Wholesale homicide is the only remedy for such an assault. Thus France twenty-six years ago refused arbitration because her honor—her dignity she called it—was involved. Whereupon she sacrificed several hundred thousand of her bravest children, lost two of her finest provinces, and paid the assailant of her dignity eight hundred million dollars to go home. No doubt her honor (or her dignity) was worth being preserved at that price; but even those who love her and sympathize with her in her great tribulation so nobly borne, may wonder if she could not have preserved her unsullied fame even had she accepted a friendly Power's mediation. It is not so clear that calm and temperate discussion may not co-exist with a jealous sense of self-respect: on the other hand, it is not certain that readiness to strike necessarily proves the possession of common-sense or a reasonable knowledge of what is due by a nation to itself and to its citizens.

Those men, therefore, who oppose a general arbitration treaty should be called upon to explain precisely what they understand by "a case involving the honor of the nation." It is evident that men will differ about the definition according to their education, temperament, or the necessities of their station, if they happen to occupy positions depending upon popular favor. Brave words are undoubtedly powerful agents of disturbance, and will effect what argument is powerless to accomplish. It is easier to inflame public resentment than to pour oil on the troubled waters of popular excitement. A dispute of any kind may be

tortured by a demagogue into an insult that demands instant reparation. A denial of any claim by a foreign Power may be argued into an assault upon a nation's dignity. But this readiness to magnify incidents that affect interests into events that affect honor has had its day; and we may be thankful that we have emerged from a condition of doubtful strength, which might increase our impatience of contradiction by leaving room for the suspicion of fear.

The advocates of arbitration may, in considering this objection, derive much comfort from the reflection that during a century of existence, wherein we have arbitrated so many differences with foreign nations, we have not yet been confronted with a case which was not susceptible of amicable adjustment. We have never yet found that our national honor could not co-exist with legal processes. Irritating questions have undoubtedly arisen; the warlike element has sometimes asserted itself, as when it declared it was a question between "54° 40' or fight"; but our practical good sense overcame the ultra-patriotic men who were burning to immolate themselves on the altar of the country's honor. Boundary questions have been settled, money demands have been passed upon and liquidated, we have had the benefit of the judgments when in our favor, we have discharged our debt when the decree was against us, and in every case we have been infinitely the gainers.

No case in modern times has offered a better pretext for the avoidance of a submission to arbitration than the *Alabama* case. Here, if ever, it might be maintained that the honor of the two nations was concerned. Great Britain was charged with evading the rules of just international intercourse by allowing the *Alabama*

to escape and to prey upon our commerce—an imputation which might well throw the British chauvinist into a delirium of patriotic indignation. The United States might well, on its side, find in this hostile action the material for the war-producing insult which lies so close to the warrior's heart. But the two great nations quietly thrust aside these suggestions of the Evil One; they treated the question as one sounding in damages; a verdict was rendered for an enormous sum, which was promptly paid; and the two English-speaking nations gave to the world their first object-lesson in Common Sense and Reason and Justice. The present treaty is merely the natural outgrowth of the *Alabama* case: it is its legitimate offspring and with it entitled to the admiration of civilized mankind.

The Lord Chief Justice of England, while professing that love for peace which so properly belongs to his cloth, asks, with an anxious solicitude, "Who will compel the contracting nation to arbitrate, if she should refuse? Who shall compel her to abide by the judgment, if she repudiates the award?"

It is of course within the bounds of possibility that, having solemnly agreed in the face of the world to arbitrate their disputes, either the United States or Great Britain may be false to its promises and recreant to its obligations. In such a case, it is manifest that there is no international *gendarme* to coerce the recalcitrant contractor to perform its duty. But this is equally true of every national obligation. Every treaty between two great nations—whether for the settlement of a boundary or the payment of an indemnity—must rest on the good faith of the parties. The difficulty of coercing fulfilment is precisely one

of the reasons that makes repudiation most difficult for a high-spirited nation. If the absence of physical power to enforce is to prevent the conclusion of arbitration treaties, it is difficult to see why the argument will not apply in all other cases. We are encouraged by the history of the past to believe that the objection is without force. In no case that I can recall has a great nation dishonored her hand and seal by refusing to carry out the decrees of the tribunal to which she has submitted her claims or her arguments. Great nations *might* dishonor their signature, but as a rule they do not: hence the value of British Consols and United States Bonds.

But, granting that so unexpected an event should occur, in what respect would the situation be changed for the worse? The original claim would still exist, liquidated by a judgment and fortified by the approval of public opinion. This at least is a risk that either party may well run, even if this pessimistic view of what may be expected from a civilized nation should be more generally entertained than it has hitherto been.

A more specious objection is made by those who express and no doubt feel some solicitude lest the American doctrine, which dates back to the time of President Monroe, should be in some way endangered by a general agreement to submit disputes with Great Britain to arbitration.

The right to exclude Europe from fresh acquisitions on the American continent is one which our people will never surrender unless coerced by force. Not only do they cherish it as a sentiment based upon honorable tradition, but the instinct of self-preservation makes it just and reasonable. A nation is not

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bound to apologize for her insistence upon the right to live and to grow. Her natural expansion cannot, with her willing assent, be embarrassed by the creation of obstacles which it is in her power to prevent. The rival nations of Europe may fight for supremacy to their hearts' content on European soil, they may parcel out the Dark Continent among themselves, they may lop off slices of China, appropriate Egypt, or invade Japan—we are disposed to abide by the rule of non-intervention with religious fidelity. So far as they, or any of them, have already acquired a foothold on American territory our good faith will not permit us in any way to intervene in their affairs. But, rightly or wrongly, we believe that our interests consist in checking aggression when it is directed against our weaker neighbors.

If, therefore, it be true that we should, by this treaty, imperil rights of such vast importance, we might well hesitate to bind ourselves by its terms. It might be urged with great plausibility that such a sacrifice is not one that we should be called upon to make, even in so great a cause as that of international peace. Prudence would require that, assuming such a danger to exist, we should in express terms except the Monroe doctrine from the operation of the agreement, or, failing this, that we should continue as in the past to provide for each emergency as it arises. It will not be denied by the most earnest advocate of the treaty that if, in terms, it provided that the Monroe doctrine and its applicability were subjects of proper submission to a Court of Arbitration, public opinion would almost unanimously condemn and most earnestly oppose its consummation.

Is there, in fact, any such grave peril? Is it to be

assumed that a case may arise between the United States and Great Britain, the result of which, upon an arbitration, might be to eliminate from our unwritten code a theory of right which is deemed of such vast importance by the majority of our people?

There is nothing in the history of the past to make any such contingency a subject of legitimate apprehension. Any argument based on its existence may be ingenious, but it is purely academic. It should exercise no practical influence on the decision of the question.

The Monroe doctrine may be treated, in reasoning out this problem, as a part of our organic law. It is entitled to the same respectful consideration as though the Monroe message had been made the subject of a constitutional amendment. The fact that it has not received the formal sanction of our people does not affect the matter: for the purposes of the argument it should be vested with the dignity of a constitutional provision.

No foreign Power can properly complain that it has not had full notice of the jurisdiction that we claim over the concerns of the American continent.

If, under such circumstances, Great Britain may properly bring up the Monroe doctrine for review, she may also attack any other of the fundamental doctrines of American policy. She may, with equal propriety, ask the arbitrators to examine our Declaration of Independence. She may attack the commercial and police clause of our Constitution and insist upon a judgment that a republican form of government, being far inferior to a constitutional monarchy, ought of right to be abolished, and the latter be permitted to take its place. This would

naturally involve an equivalent right on the part of the United States to insist upon the abolition of the House of Lords as a useless encumbrance, and of royalty itself as an expensive anachronism. If courts of arbitration are formed for the purpose of amusing the world with platonic discussions, any one of these topics might be appropriately considered; but no one would seriously contemplate the possibility of vesting a court, however eminent, with the right to pass upon questions which affect the fundamental principles of the respective governments. Concrete cases, not abstractions, are the proposed subjects of submission. The establishment of a boundary line, the payment of an indemnity, the restoration of a ship, the liberation of a prisoner,—all these are capable of investigation by a tribunal and may reasonably be submitted; but no Court of Arbitration, any more than the Supreme Court itself, will take cognizance of a contest which does not involve a personal or a property right.

It will no doubt be said that this *reductio ad absurdum* does not dispose of the difficulty, because the Monroe doctrine may be involved indirectly, although substantially, in a boundary question affecting Great Britain and the United States. We might then, it is argued, find the right of the United States challenged under such conditions as to compel us either to decline arbitration, notwithstanding our agreement, or to incur serious danger where fundamental rights are concerned.

The objection deserves examination.

The only contingency in which may arise a discussion involving, in any form, the nature, validity, or effect of the Monroe doctrine is one of boundary—where territory is or may hereafter be claimed by Great Britain on the one hand, and by a Southern

American Republic on the other. Even then no dispute involving the interests or the dignity of the United States would arise unless (1) all efforts at settlement by diplomacy had failed between those countries; or (2) arbitration was rejected by one of or both the parties in interest. The attempt of Great Britain to seize the tract in dispute by force of arms might, and probably would, arouse the susceptibility of the United States and call for the application of the doctrine which we are considering. This has already happened in the case of Venezuela and Great Britain: it may happen again. What would the course of action presumably be should a similar situation present itself in the future?

There is no misunderstanding between the United States and Great Britain as to the character and extent of the jurisdiction claimed by the former in cases of the character supposed. Great Britain has been informed that it is a cardinal principle of American policy—claimed to be reasonable and just—that the United States may, where its interests dictate, interfere to prevent the spoliation of a sister republic. Great Britain is as well informed of this as it is of the abolition of slavery in the South, or of our refusal to abolish privateering. The treaty is made *in view of this knowledge* and with the acceptance of that fact as fully as it is of the fact that we constitute a union of sovereign States. If Great Britain should attempt by force to take territory from Venezuela, Colombia, or Peru, the only question would be, *To whom does the territory belong?* This would be a proper subject of arbitration, and would regulate the extent to which this Republic might properly intervene. But there is no ground for supposing that Great Britain would ever claim, or

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that we would ever yield, a right on her part to bring into controversy a fundamental rule of which she had been duly notified before the treaty had been made. The notice has repeatedly been given, and especially at so recent a date that she cannot plead that time has wrought a change in the views of our Government. The terms of our most recent authoritative exposition were plain enough to leave nothing to interpretation, and were endorsed with such unanimity of approval that a pretence of ignorance would be as absurd as it must prove futile. We cannot suppose that the great nation that has ruled the seas for centuries and owns more real estate to-day than most of the others put together is laying traps for her junior in years; but if she is, so be it. We are not likely to suffer. The Monroe doctrine is safe, treaty or no treaty. It is quite as safe, if it is not mentioned by name, as if a timid reservation in terms should be inserted to show that the United States were not really quite sure that this repeated and solemn assertion of right had been heard and seriously considered by the world.

We should not forget that our Monroe doctrine is, after all, but the European doctrine of the balance of power transplanted to American soil. Great Britain might make a general treaty of arbitration with France or Germany. Will any one seriously contend that she thereby waived, minimized, or imperilled her right to interfere, should Germany attack Holland, or France invade Belgium? Such scruples as these do not seem worthy of a great people who know their strength, and purpose to deal in good faith with the other nations of the world. The object of the treaty is peace: the aspiration, the interest, the prayer of the world is for peace. Civilized mankind yearns for peace: the mul-

titudes groan and suffer untold hardships because to-morrow may mean war and not peace. Two of the great nations of the world, great enough to know that their honor does not consist in vague mutterings about self-respect and dignity, are willing to abide by reason and to forego violence. The gain to the world if they succeed in their noble effort at systematic harmony is great beyond the power of pen or speech to define. The nineteenth century needs only this culmination of its glories to stand out among the ages as blessed beyond all those that have gone before since the dawn of Christianity first rose upon mankind.

Above all, let us not be misled by high-sounding declamation about national honor. The only danger which our honor may run is in an exaggerated tendency to make readiness to strike the test of its delicacy and the proof of its existence. The day has come when we may smile at those who would urge us to prove our strength by the streams of blood that we can shed at short notice. A republic with a united nation of seventy millions behind it may stop to discuss without being taxed with timidity, and will not care if the effervescent mob that clamors for blood on all available occasions shall feel outraged in *its* honor because of a generous forbearance to draw the nation's sword.

In 1870, the streets of Paris were filled with valiant men full of patriotism and absinthe, who were shouting eagerly, "À Berlin! À Berlin!" How many of those doughty champions of France's honor started on the journey to Prussia's capital? How many, alas! who said nothing, but did turn their faces toward Berlin, soon found their last resting-place before they had crossed the Rhine?



III

INTERNATIONAL LAW—THE RIGHTS OF SHIPS ¹

INTERNATIONAL LAW—so called—is spoken of as a science. But it is, I venture to think, an act of violence to language and to proper definition to use that term, except as one made respectable and intelligible by prescription. It is convenient and alluring because it assimilates the intercourse between nations to the relations between men, and thus assumes, although it be but a pleasant fiction, that the principles laid down by Vattel and by Grotius command the superstitious veneration of civilized mankind. History teaches the fallacy of this, and shows us in records of undisguised brutality how feeble is that law which is without sanction, how frail the shield which it seeks to interpose between the great nations and the weaker families of the human race. It is not alone in *Æsop's Fables* that the wolf could find a reason, satisfactory to himself, for appropriating the helpless lamb. All wolves do not care to find reasons for the unlawful satisfaction of their hunger, but on a large scale they generally do discover one in a disputed succession, an appetizing boundary, or a golden opportunity to violate the Decalogue with

¹ Lecture delivered before the Naval War College, October 2, 1895.

impunity. International law, without the ability to make its precepts good by a salutary exhibition of force, is as helpless as King Canute before the rising tide. It may furnish the despoiled and outraged people with an appropriate theme for protests and appeals to the world, but with these they may remain content.

In the meanwhile let us be prepared to enforce our principles in the only way that has yet been devised. Mr. McAdoo, Assistant Secretary of the Navy, in his excellent address at the Naval War College in June last, expressed himself on this subject in language that I am tempted to repeat:

Were the affairs of nations and of men settled entirely by pure reason and unselfish justice, the pen of the diplomat might indeed, unaided, settle the destinies of mankind, but if conscious power has ever yielded up its attainments and foregone palpable advantages at the mere sound of rhetoric, I have no knowledge of the instance. The cunning of the fox is a most admirable quality, but can only supplement, not supererogate, the courage of the lion.

Even the cunning of the fox, I might add, has lost its virtue since diplomats have taken to telling the truth.¹

¹ It might be a curious subject of speculation to enquire how far the comparatively straightforward methods of modern diplomacy are due to a growing regard for truth, or to the feeling that lying does not pay in the end. It is not so long since Talleyrand de Périgord shone as the one conspicuous light in the galaxy of diplomatic stars. He had in his peculiar sphere no equal, much less a superior. And yet his warmest friends have never pretended that he had the slightest regard for truth. If he ever hesitated to advance a proposition because it was not founded in fact, history has failed to record the instance. The Metternichs, Nesselrodes,

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Nor shall we find the sources of international law of easy ascertainment and definition. Many ponderous tomes have been written to trace the rules of intercourse between nations to respectable beginnings. They are founded, learned authorities tell us with ev-

Castlereaghs, and others with whom he had to deal, may not have been more scrupulous than he. But granting that they were, which is easily possible, it is not likely that they were wholly candid in dealing with an adversary who was as free from scruples as he was fertile in resources. It is probable that the reform which has become manifest in later years is due to the Press. There are no secrets in governmental circles to-day. The Press has quite as many eyes as Argus, but, more fortunate than he, as many ears as eyes, and a number of tongues equal to the requirements of the other organs. The tardy processes of protocols are inconsistent with the new fashions developed by steam and electricity. Then, too, the people have something to say about the matters which concern themselves, and no longer wait, with respectful deference, for results brought about by deliberate, subtle, and verbose agents. War may be declared by telegraph, troops conveyed by rail at forty miles an hour, great empires destroyed in ninety days. Dilatory, ponderous, impressive diplomacy has had its day. The exquisitely polite forms with which the old-time diplomat conveyed the assurances of his most distinguished consideration to the representative of the nation which his own principal desired to dismember, threaten to become obsolete. They worked in harmonious effect with the perukes, and breeches, and silk stockings, and sealing-wax—but they are dwindling into anachronisms. Business habits and methods are asserting their sway, and displacing formulas. Not that these have wholly disappeared, but their majesty is disrobed. How these euphuistic pretences still endure is nowhere so effectively shown as in the correspondence between Napoleon III., Emperor of the French, and King William of Prussia, when the former surrendered his person and his sword to the victor of Sedan: "Monsieur mon frere. Not having been able to die among my troops, there is nothing left me but to place my sword in the hands of Your Majesty. I am Your Majesty's good brother, Napoleon." To which the brother responded: "Monsieur my brother—I accept Your sword." What an epitaph for a dying empire! What mingled pathos and sham in this pretence of fraternity, within sight and hearing of the dying victims of this brotherly quarrel!

ident satisfaction, upon the laws of nature, as though this did not complicate the subject by injecting into it an element of singular vagueness and uncertainty. If it were not presumption to question this generally accepted formula, it might be said that the law of nature, so far as it is possible to find such a law, is the very negation of that which is presumed to lie at the foundation of the law of nations. The law of nature, if it means anything, means the gratification of men's desires by all the means at their command. It is the retrograde passage from the civilized and artificial man to the imperfect and undeveloped state from which he has emerged. Rousseau and other inspired madmen may preach about the beauties of the natural condition and the altruism which it begets. But the truth is that this so-called state of nature is the very converse of the original condition of things. Rousseau's state of nature exhibits an ideal creature who can only exist where man has laid aside his innate tendency to gratify his natural passions in the natural way; that is, by violence, where violence is necessary. No man has more concisely and finely described this condition of man on his way to higher things than the Roman Horace:

When the first Mortals crawling rose to Birth,
Speechless and wretched, from their Mother-Earth,
For Caves and Acorns, then the Food of Life,
With Nails and Fists they held a Bloodless Strife,
But soon improv'd, with Clubs they bolder fought,
And various Arms, with sad Experience Wrought,
'Till Words, to fix the wandering Voice, were found,
And Name impress'd a Meaning upon Sound.
Thenceforth they cease from War; their Towns inclose
With formidable Walls, and Laws compose

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To strike the Thief and Highwayman with Dread
And vindicate the sacred Marriage-Bed.¹

When these wise men, then, speak of the law of nations as being founded on the law of nature, and a natural regard for the rights of others, they do not attach to these words the ordinary significance that properly belongs to them. Thus Vattel:

Nations do not, in their mutual relations to each other, acknowledge any other law than that which Nature herself has established. Perhaps, therefore, it may appear superfluous to give a treatise on the Law of Nature as distinct from the Law of Nations. But those who entertain this idea have not sufficiently studied the subject.

He then adds a paragraph which deserves much respect, as it was written many years ago and has been treated with consideration by eminent and serious writers:

Nations, it is true, can only be considered as so many individual persons *living together in a state of nature*, and for that reason we must apply to them all the duties and rights which Nature prescribes and attributes to men in general, as being naturally born free and bound to each other by no *ties but those of Nature alone*.

¹ This paraphrase (Rev. Philip Francis's) does scant justice to the vigor and beauty of the original:

“ Quum prorepserunt primis animalia terris,
Mutum et turpe pecus, glandem atque cubilia propter
Unguibus et pugnīs, dein fustibus, atque ita porro
Pugnabant armis, quæ post fabricaverat usus,
Donec verba, quibus voces sensusque notarent,
Nominaque invenere: dehinc absistere bello,
Oppida cœperunt munire et ponere leges,
Ne quis fur esset, neu latro, neu quis adulter.”

Horace, *Satires*, Book I., lines 100-107

If this had been written for the first time in the last decade of the nineteenth century, and such a statement had been used as the foundation for a work on the Law of Nations, we may readily believe that the critics, undeterred by antiquity and unrestrained by general acceptance, would have challenged Vattel's assumption that the refined, well-dressed, and *fin-de-siècle* inhabitants of Paris, London, and New York were living together in a state of nature, and that man being naturally born free was bound by no ties but those of nature alone. These critics might then, without disrespect, point out the fallacies of such a statement and the singular consequences to which they may lead. The individuals composing modern society have long since emerged from "the state of nature" and are refined, humane, orderly, and prosperous in the measure of their abandoning that state and assuming another. Self-denial and some measure of altruism distinguish the artificial man from the natural man, whose instincts are his law, whether they tell him to use his aged parents for food or sell his children into slavery. To what model would such instructors as Vattel refer us? There must be an ideal state which they may point out and urge us to imitate. What African tribe or South Sea island clan or Malay community illustrates in itself the golden rules that are interwoven into and form the chief texture of the Law of Nations? Nay, they are out of the pale of that law and may not claim any portion of its benefits, partly because they are ignorant of its existence, and partly because they have, none of them, the physical power to enforce its application. It is plain, then, that the Law of Nature, spoken of by so many authors, is one that they have not defined, and

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which, whatever it may be, is not the Law of Nature of which we so often speak in so different a sense.¹ In other words, they had in mind some other and different law which they intended by this misnomer to hold up for imitation and respect. They probably considered the Decalogue and the Sermon on the Mount as part of the vague generalization which they have thus fallaciously called to their assistance. These do indeed form a code of morals or a system of ethics upon which a stately edifice may be reared for the benefit and improvement of mankind.

Jeremy Bentham, in commenting upon the "False Manner of Reasoning in Matters of Legislation," has touched upon this point and made it clear:

What is natural in man is his feelings of pain or pleasure—his inclinations; but to call these feelings and inclinations laws, is to introduce a false and dangerous view and to put language in contradiction with itself, for laws must be made for the very purpose of suppressing these inclinations.

What Bentham says here of municipal laws and their object applies with still greater force, perhaps, to the rules which govern the relations of nations with one another, for experience has taught us, and history proves, that great agglomerations of men are more readily inflamed to the point of injurious oppression

¹ "The words 'nature' and 'natural' are constantly bandied about in controversy, as if they settled quarrels, whereas they only provoked them by their ambiguity."—RITCHIE, ch. ii., p. 21.

"What is justice? What are laws? What is the State? The man who speaks in the law courts or political assemblies, speaks as if he knew what these terms meant. The sophists made him think whether the terms as ordinarily used had any definite meaning at all."—RITCHIE, ch. ii, p. 23.

and unnecessary violence than individuals. The contagion of example, the hope of impunity, the love of fame, and many other elements call for restraint and demand a curb which no rhapsodical appeal to the laws of nature will ever furnish.

Some recent writers have sought to evade the difficulty by metamorphosing the Law of Nature into something which it certainly is not, and thus have sought to continue Vattel's misnomer by making it a synonymi for something different from itself. Thus Hautefeuille, a writer of reputation, says:

God has given to nations and to those who govern them a law which they are to observe towards each other, an unwritten law, it is true, but a law which He has taken care to engrave in indelible characters in the heart of every man. It is the Divine or Natural Law; it constitutes what I shall call the Primitive Law.¹

In what respect the situation is improved by labeling a system Primitive Law, instead of Divine Law or Natural Law, it is not easy to see. Indeed, the new label appears to do nothing more than to add to our perplexity. While we may accept and understand either of the others, it would require much learning to fix the date, origin, or extent of this so-called primitive and unwritten law. The fact is that our modern system of international law is the expression of the moral sense of mankind, ever growing, improving,

¹ "Who is to interpret, in last instance, the principles which are termed laws of God, laws of nature, laws of reason, and laws between nations, when they are invoked by anybody in justification of disobedience to a command of the State, or of the powers which the State authorizes? Is it not evident that this must be the State itself?"—*Pol. Science and Comparative Const. Law*, vol. i., p. 53. Professor BURGESS, of Columbia College.

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developing, and spreading. It is based upon modern Christian civilization and infinitely more upon the written word of God than upon the so-called unwritten law. It bears only a remote resemblance to the original and much-restricted *jus gentium*,¹ and finds its *raison d'être* in custom and a generally recognized system of Christian ethics common to the nations that profess obedience to its mandate. It does not and cannot apply to barbarian, heathen states, for there is no common ground upon which the parties may meet. To act upon the Golden Rule in dealing with nations that believe in revenge and ready violence as the only treatment for grievances, real or supposed, would be absurd in theory and impossible in practice.

The Law of Nations will then be found to consist of certain rules of self-denial, forbearance, and courtesy which have been found conducive to the mutual interest of men. As nations improved in their moral conditions and learned to realize the benefits of peace, these rules adapted themselves to the changing features of the times. Courtesy between individuals easily led to courtesy between rulers. Good faith in private dealings was the forerunner of good faith in public matters. The habit of respecting a neighbor's

¹ "The phrase *jus gentium* was in the seventeenth century, by a mistranslation, taken to mean 'the law of nations,' which we now call 'International Law.' The mistranslation was a fortunate one, because it allowed Grotius and others to introduce the humane conceptions of the Roman 'law of nature' into the theory of the right relations between independent political societies; nevertheless it was a mistranslation. *Jus gentium* was the term used to describe those principles on which Roman magistrates decided cases in which the parties were not both Roman citizens, and in which, therefore, the *jus civile* was regarded as inapplicable."—*Natural Rights*. Professor RITCHIE, p. 37.

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field inspired some scruple, perhaps, as to the propriety of seizing a tempting bit of neighboring territory. And, possibly more than all combined, it was found that the practice of treating other nations with fairness and with justice was the most expedient in the end. It is utility, after all, that furnishes the solid substance and foundation wall of international as of private law. And yet, instances are but too common to show that when one nation has the power, and finds it expedient to disregard the rules of ethics and to adopt the suggestions of policy, the latter drives its white-robed opponents from the field of discussion; it seizes the lion's share because its name at that particular moment happens to be Lion.¹

President Washington, at the time of his first inauguration, in solemn tones of warning, taught his people the value of justice in dealing with other nations by dwelling upon what he termed "the indispensable union between duty and advantage, between the genuine

¹ The ideal exponent of this justification of force in our century is undoubtedly the Iron Chancellor of Germany. Blood and Iron are the tonics which he is said to have recommended for anæmia, the prevailing ailment in the body politic. Whether or not he ever did declare that "*La force prime le droit*" (or as we would express it, "Might makes right") may be uncertain, but the people whom he brought to the depths of humiliation in 1870 have always attributed to him this frank if cynical declaration of his guiding principle. Frederick the Great, the real founder of the German Empire, might have hesitated to make such an avowal, but then he became a philosopher, after he had had his share of Poland, and something of a moralist after he had demonstrated by his successful war on Maria Theresa, that honesty is not always the best policy, at least for ambitious monarchs. The great Chancellor, however, is not a philosopher, he does not make verses, and does not play the flute (at least so far as we know); in these respects he differs from the great Prussian King, who made Sadowa probable, and Sedan possible.

maxims of an honest and magnanimous policy and the solid rewards of public prosperity and felicity.”¹

We may be content to accept this as the maxim that should govern the public acts of a great people. To be honest and to be magnanimous is a programme in itself, and we may, as citizens of these United States,

¹ This language of our first President may be considered the starting-point of our diplomacy, which has been, notwithstanding its recent birth, singularly brilliant and fortunate. It has given a flat denial, of the most conclusive kind, to the idea that diplomacy was an occult art, which required early training in tortuous devices and an intimate acquaintance with complicated precedents. In one respect it has been very fortunate for the United States that they were not possessed of a diplomatic school. The disadvantage which European powers sometimes labor under from the old-fashioned method of keeping young statesmen on hand for the purpose of getting advantage of other nations in their international disputes often gave respectable mediocrity an opportunity to show its incapacity. Our Presidents, not having a college of young statesmen to select from, simply took from political life the ablest and most intelligent men that they could find, and those best calculated by their knowledge of the subject with which they were to deal, to secure fair treatment from other nations. No better illustration of this could be adduced than the history of our negotiations with Great Britain, which ended in the Treaty of Ghent. President Madison had no diplomats to send to England on this most important subject, so he selected John Quincy Adams, Albert Gallatin, Henry Clay, James A. Bayard, and Jonathan Russell for the purpose; men of tried courage, experienced ability, and noted patriotism. Their adversaries, whose names history has scarcely preserved, were no doubt trained in all the formulas of the school to which they belonged, but they were almost ludicrously unequal to the international contest in which, unfortunately for themselves, they were forced to embark. All the probabilities were against the success of the American commissioners. England at that time was in the flush of her continental triumphs. Her great opponent was relegated to a small island in the Mediterranean, and she was patting France on the back with patronizing and most exasperating kindness. She had had recent and great successes over the Americans; she was about to send some of Wellington's best-trained troops to the United States to conclude the war, and her principal journal declared that England would be satisfied

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claim with confidence that we have in the main moulded our diplomacy after this lofty standard; that we have been slow to wrath, ready to reason, gentle to the weak, and firm with the strong. It is no boast to say that to-day the world is better for our example and for our efforts to be "honest and magnanimous." Senseless and cruel war has received no encouragement at our hands, and if the humane and

with nothing less than a large slice of the northern part of the United States, with the abandonment of the asserted right to the fisheries, and with their submission to the right of search and impressment. The collection of epithets hurled against President Madison by such journals as the *Times*, the *Chronicle*, and other leading papers, would make a very fair dictionary of Billingsgate. No epithet was too vile to apply to him, to his party, and to his country, but, notwithstanding all these disadvantages, and notwithstanding the fact that the English envoys began by ultimata which were absolutely inadmissible, the skill and the consummate ability of the American commissioners finally drove Great Britain into a treaty which was acceptable to the United States. While the chief glory of this success is due, no doubt, to Albert Gallatin, yet all his brother commissioners contributed to the grand result. It fortunately happened that the work of diplomacy was supplemented and rounded off by Andrew Jackson, on the 8th day of January, 1815, while the ship which bore the treaty was ploughing its way over the stormy Atlantic to New York. There are few events in the history of this country which have had the moral effect of that victory. It marked a turn in the tide of international politeness, if nothing else. Up to that moment the authorities and the Press of Great Britain had treated the ex-subjects of Great Britain with undisguised contempt. They were simply ungrateful rebels who had chanced to succeed, but who were sure to fail in their ambitious and ridiculous efforts at self-government. History has recorded the epithet that was applied to Benjamin Franklin, who was likened by Wedderburn (Lord Loughborough) to a man of three letters (*homo trium literarum*, that is a "fur" or thief), a classical allusion which displayed familiarity with old authors, but which did not prevent Franklin from getting the best of his lordship in the end.

From that time up to this day the United States have, as a general rule, been represented abroad by men of marked ability

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peaceful methods of arbitration constitute to-day the most approved means of solving international disputes, the great honor of this stride in human progress is due to the nation that Washington instructed in the pursuit of happiness, through honor and right-doing. His words have not fallen on stony soil, but have brought forth fruit abundant and precious.

Custom is a source of international law which is entitled to special consideration. Custom creates an

and character, men who were able to hold their own with the best of the trained diplomats of the world. They were equally competent to speak, or to hold their peace, as occasion required. Mr. Trescott's excellent work on our Diplomatic History contains nothing which would make an American blush.

On the subject of Franklin, and the ability of our Ministers abroad to hold their peace, I cannot refrain from quoting a story charmingly told by Mr. Hanotaux, the late Minister of Foreign Affairs, at the banquet of the American Chamber of Commerce on the Fourth of July last at Paris:

"When Franklin arrived in France he was somewhat astonished at the luxury, noise, and bustle of the Court of Versailles. The courtiers, who are by nature effervescent and volatile, made much ado over him. He was himself inclined to be taciturn. The Society of Friends, to which he belonged, had, as you know, established a rule of silence. Vergennes, likewise, was of a reserved, circumspect, uncommunicative nature. The introducer, having presented Franklin, withdrew. The two statesmen, left alone, bowed to each other. Vergennes, with a gesture, invited Franklin to be seated, and then waited. Franklin, however, said not a word; possibly he wished to put his companion's gravity to the test—the French had always been pictured to him as being so loquacious. . . . The Minister felt that he was on the verge of overstepping the rules of courtesy and hospitality. He, therefore, took out his snuff-box and invited Franklin to take a pinch of snuff. The latter complied, reflected an instant, and took his snuff in silence. Vergennes, on his part, did the same, and thus returned the compliment. After a brief flash of silence Franklin arose; so did Vergennes, whereupon, after a farewell obeisance they parted. This was the entire sum and substance of their first interview, which, happily, was to be followed by others of a more fruitful character."

implied agreement between nations to accept as proper and just in the future what has been done without objection in the past. The value of precedent, especially to the Anglo-Saxon race, cannot be overestimated. It is to-day the ruling factor in the government of Great Britain. A sovereign Parliament is omnipotent except to disregard precedent, that mysterious oracle which dictates or forbids action at its will. Precedent is the controlling ingredient of the Common Law and turns the Present into an obedient servant of the Past, until some positive enactment, hesitatingly passed and often grudgingly obeyed, lets in the sunshine of the new day to light up the musty records of bygone ages.

And finally, but in reality first, we meet "Self-Preservation" to disturb and control international relations. The great warriors have often confounded it with personal ambition and have listened to its voice until they heeded no other. Cæsar dealing with Gaul, Frederick with Poland, Napoleon with Spain, the Holy Alliance with Europe, have shown how slight and frail a barrier mere Right could erect to withstand the assaults of ambition and self-interest.

To these we might not improperly add Treaties, although treaties, being express and written contracts standing or falling upon their own provisions, may not necessarily be included in the list. Such compacts might be made without reference to a general scheme of law, and in fact may be and sometimes are operative as *pro tanto* superseding it.

We thus have, with the reservation above made, the same ingredients in substance which Grotius enumerates as constituting the sources of international law: "*Jura naturæ, leges divinæ, mores et pacta.*" If he had

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stricken out the first and substituted the language of Washington, the definition would have been improved. Chronology, however, if nothing else, has not permitted him to do this. As I wish to be wholly guiltless of presumption, I shall not venture upon any definition of my own, but will select from the many that we have had, that one, the author of which is held in particular veneration by the jurists of our country—I mean Chancellor Kent. His definition wisely omits all reference to the natural law, of which so much has been said: “International Law, as understood among civilized nations, may be defined as consisting of those rules of conduct which reason deduces, as consonant to justice, from the nature of the society existing among independent nations; with such definitions and modifications as may be established by general consent.”

Having proceeded thus far in laying down principles which must be kept in view when any special and incidental question arises between nations, I purpose to consider one topic which is too large in its scope and importance for more than superficial treatment in such a paper as this. It deserves, indeed, most careful attention, for in its application it may hereafter involve grave consequences to our honor as well as our interests. I mean the question of so-called asylum on ships.

The present fashion of studying municipal law favors the consideration of a leading case, and the examination of the conclusions reached in and properly to be deduced from its decision. Following this practice, which presents manifest advantages, we will briefly study the *Barrundia* case; it is one of conspicuous importance because of the principles involved and of the tragical ending which stained the deck of an American ship with the blood of a political refugee.

The facts may be briefly stated; they are in the main uncontradicted.

General Barrundia, prior to 1892, had held a high position in the Government of Guatemala, but having failed to obtain the Presidency, he proceeded to organize an invasion of his country from Mexican territory. Being thwarted in this he was disarmed by the Government of Mexico. On the 23d day of August of that year he found his way to the port of Acapulco (in Mexico), where he took a ticket for Salvador on the American steamship *Acapulco*. The steamer sailed on the day last named for Panama; she was to stop on her way at several ports of Guatemala. The movements of Barrundia having become known to the authorities of Guatemala, they determined to arrest him, but were apparently troubled by scruples as to the probable attitude of the United States. They might not unreasonably apprehend that an American captain would offer moral, if not actual, resistance to an invasion of his ship for the purpose of removing therefrom a passenger, who was charged with a purely political offence. It was not clear to them that the Government of the United States would view without dissatisfaction a proceeding for which there was no clearly established precedent. The value of precedent in public as in municipal law has been already briefly adverted to; and if it were the fact, as has been claimed, that no cases in the past could be found to justify, but many to forbid, the exercise of such an alleged right, the Government of Guatemala acted with wisdom in seeking to procure, at the outset, the assent and the active co-operation of the representative of the United States to Central America.

The Minister for Foreign Relations of Guatemala,

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realizing this, addressed a despatch to the United States representative, in which, after stating certain facts in support of his contention, he claimed that his Government had "a perfect right, being *in a state of war*, to capture Barrundia on the steamer which was [is] anchored in Champerico, a port of Guatemala." The Minister concluded his despatch with a request that "the Honorable Consul-General and Chargé d'Affaires of the United States will, if he thinks proper, give his directions by telegraph to the effect that the captain of the vessel referred to might not offer any resistance to the capture or arrest of the said General J. Martin Barrundia."

Captain Pitts of the *Acapulco* became aware of the intention of Guatemala to detain his passenger, and at once realized the responsibility which he was called on to assume. It is not impossible that a sentiment of humanity, mingled with the natural reluctance of an American citizen to aid in the surrender of a political refugee, may have operated upon his mind. He may have thought that the American flag which he carried meant something not easy to reconcile with a voluntary surrender of the passenger whom he had taken on his ship. Be this as it may, he wrote this categorical despatch to Mr. Misner, Chargé d'Affaires of the United States to Central America: "Shall I deliver General Barrundia to the authorities here? If so, please send me a letter with your signature to that effect." The United States Minister did thereupon inform him, over his signature, that it was his (Captain Pitts's) duty under the Law of Nations to deliver General Barrundia to the authorities of Guatemala.

It is due to the Chargé to add that he wrote, at the same time, that guaranties had been given him that

Barrundia's life should not be in danger, or any punishment inflicted upon him other than for causes theretofore stated.

The burden of a decision having thus been placed upon the Chargé, Captain Pitts made no further objection to the surrender and proceeded to carry it out. General Barrundia was not, however, disposed to yield without a struggle. Mr. Misner briefly informed his Government of the result as follows: "General Barrundia, having resisted arrest on board the *Acapulco*, was, after having fired the first shot, killed by Guatemalan officers." This dramatic termination impressed the case with unusual importance, and the question arose how far the United States Chargé had made himself responsible for this tragical culmination by his participation in the surrender; or rather, it might be justly said, by the surrender itself. Captain Pitts had not undertaken to settle the question whether the delivery of his passenger could properly be required of him.

This narrative would be incomplete were it not stated, in addition, that there was a vessel of the United States then and there present within easy reach of the *Acapulco*. A suggestion from the Chargé to the commander of the armed vessel of the United States would have insured life and safety to the unfortunate refugee. It is not probable that the authorities of Guatemala would have undertaken to pursue their victim on the deck of such a ship, although, after the event in which they had obtained so brilliant a triumph, the representative of Guatemala announced that he would have sunk the merchant vessel had his demand been rejected, "even though it might have involved a conflict with the two armed vessels of the United States

which were then and there present." It is fortunate, perhaps, for the gentleman who wrote these brave words that he was not called upon to show that his valor was greater than his discretion. We may dismiss these ebullitions, as did Secretary Blaine, without much notice. *Ex post facto* threats and extravagance of language after the event not infrequently afford relief to persons who have escaped grave peril; they do no real harm to the other parties concerned.

Upon being informed of all the details which affected and helped to bring about the death of General Barrundia, by violence, on an American ship, Secretary Blaine wrote a despatch to the Chargé d'Affaires of the United States in Central America. This paper deserves careful attention and study. It reviews the circumstances which culminated in the final catastrophe, and after censuring the Chargé in strong terms, it concludes by informing him that in the opinion of the President his usefulness in Central America was at an end. He was therefore requested to leave his post with all convenient despatch.

The Chargé, in reply, insisted that he had acted in accordance with the law of nations, and closed by an appeal to the considerate judgment of his countrymen.

Mr. Misner based his plea mainly upon the decision in the Gomez case, decided by Secretary Bayard, and upon the fact that "the entire diplomatic corps in Central America, excepting the representative from Mexico, had, in writing, endorsed his course in the Barrundia case." The former of these pleas, if sustained in fact, must certainly go far to justify his position; but it is at least doubtful whether, in a matter exclusively touching the honor of the American flag and the interests of the American people, the

opinions of the diplomatists referred to are relevant or important.

Anything approaching a full discussion of this important case would far exceed my limits, even if generously extended; but a few suggestions may be made which will perhaps open a field to others for more extensive and profitable discussion.

Leaving out of view, for the moment, the despatch in which Secretary Bayard is said to have made a precedent which the American representative was authorized, if not bound, to follow, no case can be found, I believe, in which a representative of the United States gave actual aid to a foreign power in removing a political prisoner from an American ship, especially while that prisoner was in transit from one foreign port to another. The cases cited by Mr. Blaine would seem to place this assertion beyond the sphere of reasonable contradiction. If this be so, the very unfortunate result of the *Barrundia* incident has been to disturb a line of precedents which strongly supported the generally accepted idea of our people that the flag of the United States gave some protection to political refugees who had sought for safety under its folds. That there was a general consensus of opinion to that effect is a proposition not easily susceptible of mathematical demonstration. But I incline to think that Mr. Hall was not far from the truth when, being Minister to Central America, he telegraphed to the American consul in a case generally similar to the one under consideration:

Say respectfully to the Minister for Foreign Affairs that our Government never has consented and never will consent to the arrest and removal from an American vessel

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in a foreign port of a passenger in transit, much less if offence is political.

If it be true that demands for the surrender of political prisoners have, prior to the *Barrundia* case, been made and denied by captains of American merchant vessels, precedents have established, to some extent at least, a right to protect the passenger against summary extradition.¹

¹ That merchants vessels lying in the ports of a foreign state enjoy certain immunities from the local jurisdiction, even in the absence of express treaty stipulations, seems to be generally conceded, but all writers do not agree as to the extent of this privilege or exemption. The general idea connects it with the theory that the ship belonging to a foreign nation is to be considered in some aspects as part of the territory to the jurisdiction of which she belongs. In other words, that ships are floating portions of the country upon which they depend, and are as such entitled to receive some of that respect and courtesy which the general Government exacts for itself. This view does not seem to have been adopted by the French courts and French authorities, for although they go as far, perhaps, as others in recognizing the *fact* of extra-territorial rights, they do not ascribe the privileges which flow from it to the same sources. Mr. Hall, in his recent work on International Law, says that, according to the view held in France, the crew of a merchant ship lying in a foreign port is unlike a collection of isolated strangers travelling in the country; that it is an organized body of men, governed internally in conformity with the laws of their state, enrolled under its control, and subordinated to an officer who is recognized by the public authority; although, therefore, the vessel which they occupy is not altogether a public vessel, yet it carries about a sort of atmosphere of the national Government which still surrounds it when in the waters of another state.

It may not be easy to see any substantial merit in the distinction. Extra-territorial right based upon the principle first enunciated, viz., that the ship is a floating part of the territory, does not seem to differ materially from the French idea. However this may be, the result in both cases is the same.

It may be observed that the result reached by the French political authorities and courts is the same practically as that pro-

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It may be claimed, however, and with some reason, that Secretary Blaine only decided that the United States Chargé had erred in actively co-operating with the foreign authorities in the effort to secure the person of General Barrundia, and that the real question still remains open. But it is scarcely possible to read pounded by our Supreme Court in the *Wildenhus* case. (120 U. S. Rep., p. 11.) They held that "there is a distinction between the acts relating solely to the internal discipline of the vessel, or even crimes or lesser offences committed by one of the crew against another, when the peace of the port is not affected, on the one hand; and, on the other, crimes or lesser offences committed upon or by persons not belonging to the crew, or even by members of it upon each other, provided, in the latter case, that the peace of the port is compromised."

Thus, in France, each case stands upon the peculiar circumstances that create and concern it. In two instances stated by Mr. Hall, it has been held by the superior courts that certain acts which were the subject of consideration, related wholly to the interior discipline of the vessel, and that the local authorities had not jurisdiction; while in a third, the court having expressed its doubt as to the applicability of the principle upon which the earlier cases were decided, the Government, on being consulted, decided in favor of extra-territoriality, and directed that the offender should be given into the custody of the authorities on board his own ship.

Mr. Webster, whose opinion has been quoted in the text, has probably gone as far as any American statesman in arguing for a right of exemption from local jurisdiction. In his correspondence with Lord Ashburton he argued that slaves, so long as they remained on board an American vessel in English waters, did not fall under the operation of English law. It may be, as Mr. Hall says, that Mr. Webster would have been embarrassed by a call for reference to sufficient authority. Possibly Mr. Hall's prejudice as an Englishman may have suggested the possibility of embarrassment on Mr. Webster's part. Those who have studied Mr. Webster's life and works may be pardoned if they are somewhat amused at the idea that that intellectual giant solemnly laid down propositions which he was unable to sustain. He may not have been able to cite cases directly in point, because the ever-varying complexity and extending area of international questions create cases for which precedents cannot always be cited; but there are certain

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the Secretary's letter without a resulting conviction that he himself would not and did not intend to concede the assumed right to enter upon and search an American ship to find an alleged political prisoner. How far he was right in his interpretation of the law of nations, in this particular, presents an alluring field for discussion.

It must be conceded that Secretary Bayard, in the principles which Mr. Webster, more than any man of his day, was competent to understand, to elucidate, and to apply to any incident that multiple international relations might create.

Many states have followed the example of France as to the exercise of jurisdiction over foreign vessels in their own ports, and have been disposed to take a generous view of the claim of exemption from local jurisdiction. In several recent consular conventions, beginning with that between France and Chili in 1846, it is stipulated that the purely internal order of the merchant vessels shall be subject to consular jurisdiction, and that the local authority shall only be permitted to interfere when the peace or public order of the port or its neighborhood is disturbed, or when persons other than the officers and crew of a ship are mixed up in the breach of order which is committed. These conventions are of value, as taking out of the domain of unwritten and uncertain right the limits of extra-territoriality, as applied to ships. At the same time it must be obvious that the difficulty is not wholly removed, and it will not always be easy to determine when the local jurisdiction may be invoked, or when it may be unlawful to assert it. The *Wildenhuis* case is an illustration of this, so also the *Barrundia* case. It was never pretended that *Barrundia* should be surrendered because he or the ship upon which he was sailing had disturbed the peace or public order of the port or its neighborhood. As it is stated in the text, the demand was placed upon the ground that a state of war existed, thereby creating a condition of things which justified the claim of a right to search the ship. As a general rule, it is undoubtedly true that the exercise of such a right does not exist in time of peace.

Massé, in his work on International Law, holds that two sovereign nations cannot advantageously waive this rule.

Massé declares that "whatever may be the object of visit in time of peace, it is always an act of police which cannot be exercised by one nation towards another, because it implies on the

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Gomez case, laid down rules of conduct which would seem to imply that, in his opinion, the obligation to surrender the passenger on demand is unqualified and absolute. The language used by him, emanating as it does from an accomplished and patriotic statesman, cannot be brushed aside or disregarded. Mr. Blaine evidently felt that he could not overlook it, and that portion of his despatch which seeks to avoid conflict of decision with his predecessor betrays marks of embarrassment. His reason for refusing to be bound by instructions which jarred with his own views of American rights and American duties do not appear conclusive, in so far as they discriminate between the two cases; and it is but just to Mr. Misner to admit that he may find some justification for his action in that despatch. Mr. Blaine's argument need not be rehearsed here. Those interested in such questions will find it ingenious even if specious in its attempts to distinguish. But I will venture one or two additional suggestions in support of the view that the two cases are not identical.

part of the visitor a sovereignty incompatible with the reciprocal independence of nations. Furthermore, two nations cannot advantageously grant one another by special conventions the reciprocal right of visit in time of peace. As such conventions imply an abandonment of the sovereignty, which is in its very essence inalienable and incapable of being ceded, the two nations which have mutually given up their rights can only have made a temporary abandonment of them, which no lapse of time can render definitive." (Note to Lawrence's *Wheaton on International Law*, p. 257.)

To the same effect is Hautefeuille: "The act of search cannot be exercised in time of peace; all the nations that have yielded to superior power or blandishments, or to any other influence, so far as to consent that their ships might be searched in time of peace, must, in order to recover the independence which they have alienated, seize every occasion to put an end to this violation of one of the most essential principles of international law."—(Hautefeuille, *Droit Maritime International*, p. 503.)

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In the first place, the master of the *Honduras* (in the matter of Gomez) had made himself liable, by his departure without a clearance, to the penalties which the laws of the port attached to such an omission. His motive was one which commends him favorably to the judgment of all humane men. He was not willing to yield up the refugee whom he had taken under his protection, and at the same time forcible resistance would have been worse than idle. It does not appear that there was a federal ship at hand to relieve him from the dilemma. He settled the question by hastening his departure, and thus performed what he considered a moral duty by violating the port laws of Nicaragua. But his reason for this did not concern the authorities of Nicaragua; indeed, if they were considered at all, they only aggravated his guilt. Secretary Bayard could not but realize this and decide accordingly. If we may liken his despatch to a judicial decision the only point that he settled was that the captain was wrong in leaving the country without a due compliance with the laws which every ship was bound to obey. And if he has gone beyond what was necessary in the general language that he used as to the duty of surrender, such *obiter dicta*, or remarks by-the-way, cannot bind those who follow him in his decision of the principal point. It may be said, too, that the master, in yielding to an amiable impulse, assumed, without sufficient warrant, that the authorities would insist upon and compel a surrender by force, after a refusal given with the sanction of the American Minister. This result was not at all certain to follow. The right to board the ship and remove at will a person charged with a political offence was at least doubtful, and we may well hesitate to believe

that the political authorities of Nicaragua would have defied the Minister as well as the master, thus exposing themselves to the resentment of their most powerful neighbor and most reliable friend. This, it must be borne in mind, was prior to Barrundia's case, which may have changed the general situation. Foreign nations now know that in one instance, at least, a foreign force has boarded an American ship, and, failing to remove, has with impunity killed a political refugee in transit from one neutral port to another.

In the next place, the question before Secretary Bayard was an abstract one. He was not dealing with an actual fact. He was not deciding whether Gomez should or should not be delivered up. No American ship had in fact been invaded, no political refugee had in fact been the victim of an attack made upon its deck by foreign soldiers or bailiffs; the question of national right and duty and honor had not been presented in such a way as to arouse his feelings as a patriot or to suggest weighty considerations of future responsibility by the creation of dangerous precedents. It may be that the distinguished Secretary, if a grave occasion arising out of solemn facts had presented itself, would have expressed the same opinion. He might have ordered Gomez's surrender, he might have aided in effecting it, he might have condoned his violent taking-off if Gomez had suffered Barrundia's fate. But this is only conjecture; he might, on the other hand, have refused to do any of those things. We only know that he held that the captain who left port without his papers had violated the law and had assigned no sufficient reasons therefor.

The learned Secretary does, however, state the law of nations in general terms as he understands it to be;

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and if his despatch is to be used as a text and a guide in the future, and without reference to the question immediately before him, he has done much to settle the question adversely to the right, never formally conceded, of a foreign government to remove a political refugee from our ships. He states that

when a merchant vessel of one country visits the ports of another for the purposes of trade, it owes temporary allegiance and is amenable to the jurisdiction of that country and is subject to the laws which govern the port that it visits so long as it remains, unless it is otherwise provided by treaty. Any exemption or immunity from local jurisdiction must be derived from the consent of that country. No such exemption is made by the treaty of commerce and navigation concluded between this country and Nicaragua on June 21, 1867.

This is, no doubt, a fair statement of the public law, considered in reference to the point submitted to Secretary Bayard, viz: The right of the master of a ship to leave without papers, with which he was bound, under the port regulations, to provide himself; but if it was intended to formulate a general and unqualified rule, it may be suggested, without disrespect, that neither the treaty nor the public law nor our Supreme Court sustains this position as clearly as the Secretary appears to have assumed.¹

¹ Professor Snow, of Harvard College, in his *Cases on International Law*, cites the Gomez case as establishing the principle that "merchant vessels do not possess the right of asylum." The comments in the text show precisely what Secretary Bayard did decide. The proposition laid down by him was simply to the effect "that when a merchant vessel of one country visits the ports of another for the purposes of trade, it owes temporary allegiance, and is amenable to the jurisdiction of that country, and is subject to the

The treaty referred to by Mr. Bayard contains in its provisions nothing indicating a desire to restrict immunities theretofore existing nor to abrogate prevailing practices. It was designed to enlarge, not to minimize; to give, not to take away; to ensure, not to make doubtful that which the citizens of each country laws which govern the port it visits, so long as it remains, unless it is otherwise provided by treaty.

"Any exemption or immunity from local jurisdiction must be derived from the consent of that country. No such exemption is made in the treaty of commerce and navigation concluded between this country and Nicaragua on the 21st day of June, 1867."

Granting this to be the general rule, it is clear that certain exceptions have been by general consent, and in many cases by treaty stipulations, engrafted upon the principle of local jurisdiction, and it is rather upon these that the question in *Barrundia's* case and in that of *Gomez* may turn.

The term "Right of Asylum" seems to be responsible for much of the difficulty that attends these cases. "Right of Asylum," as that expression was once understood, may be discarded and conceded to be obsolete, or never to have existed; and yet the forcible removal from an American merchant vessel of a passenger on the route from one neutral port to another by violence, on the ground of a prior political offence, may still be of doubtful legality. If *Barrundia* or *Gomez*, having violated the laws of Nicaragua, had escaped *directly* from their pursuers, and had sought refuge upon the deck of a Pacific Mail steamship, *then lying in one of the ports of that country*, it might be claimed that the master, by receiving the fugitive, was disturbing, or, at least, imperilling the peace of the port, and that the ship was in a measure an accomplice after the fact by facilitating the criminal's escape. That prisoner, on this hypothesis, had never left the jurisdiction of the state which claimed the power to arrest him. It might be a grave stretch of authority were the United States to claim that, by a single step from a wharf to the deck of a merchant vessel the fugitive had acquired immunity as complete as that which was in mediæval times accorded a fugitive who found a refuge within the consecrated walls of a cathedral. No one, so far as I am aware, has made such a claim. But it will be remembered that these men had left their country weeks or months before their capture, and that they had been in freedom and security during the interval. The shipmaster had done nothing to promote their criminal

had enjoyed prior to the treaty. There is nothing in its terms to indicate that Nicaragua was disposed to extend her jurisdiction over United States ships. If the treaty had been the law of Barrundia's case, it might fairly be argued that General Barrundia's per-

designs, if any such there were, nor had he offered them a refuge when pursued by the officers of the law. It cannot be said that he was carrying the alleged criminal to his country for criminal purposes. The stoppage at a port of Guatemala was a mere incident of a lawful voyage from one neutral port to another. To receive a fugitive criminal, while in the jurisdiction of the offended country, may be a crime of itself, for which the master may be properly held liable, as he would be for receiving and removing stolen property, to the detriment of the citizens or residents of the country in which he was temporarily sojourning with his ship. But is it at all clear that the same principle applies where the master does not know that his passenger has offended, or is charged with violating the laws of the government to the general jurisdiction of which he is for a brief period to submit his ship? Accepting the rule, then, we are but little nearer a solution until we decide the questions suggested in the text as to the effect of custom and treaty provisions. As Sir Travers Twiss says (in his work on the *Law of Nations*, p. 230): "There are cases in which the comity of nations has suspended the exercise of certain rights of empire (*jura imperii*) so uniformly, that a custom has grown up whereby the *exception* has acquired the character of *law*." The difference between this view and Mr. Webster's expression is that the latter claims the general rule to be *in favor of exception*, and the burden of proof to be on those who assert liability to local jurisdiction. But this consideration, while it may have its importance in certain cases, and as bearing upon the principle underlying the rules, is not practically of serious consequence when we are called upon to determine any given case. As Secretary Bayard correctly states the rule, any exemption from immunity must be derived from the consent of that country (*i. e.*, the country in which the ship happens temporarily to lie). But that consent may be inferred from precedents, from treaty stipulations, and from the presumption that the exceptions usually accorded to foreign ships by other nations will not be denied by the government of the country which asserts the claim of jurisdiction.

The suggestion made above that a distinction might be drawn between the case of an alleged criminal embarking at a neutral

son was sacred under the circumstances above recited, so long as the peace of the port was not violated. Article II. expressly provides that

there shall be between the United States and Nicaragua a reciprocal freedom of commerce; that the citizens of the two countries, respectively, shall have full liberty freely

port *en route* for another neutral port, and the case of a fugitive seeking asylum on a vessel in the waters of his own country, from which he has not been able to escape, receives support from the language of Secretary Gresham, who may well be supposed, in a matter of national importance, to have weighed his language with judicial care. He decides that whether "the passenger may have come on board *at the port where the demand is made, or at another port of the same country, is immaterial to the right of local jurisdiction.*" The use of such language in connection with his condemnation of attempts to capture a passenger by force, without regular process, in a port of call, clearly indicates that Secretary Gresham was not ready to assent to the proposition that the local authorities were omnipotent. His acceptance of the precedent created by Secretary Blaine's disavowal and rebuke of Mr. Misner's action, in giving to the Guatemalan authorities an order for the surrender of the accused, is also significant.

Before dismissing this branch of the subject, it may be interesting to note an expression of Secretary Bayard's in his despatch above quoted. "It is clear," he says, "that Mr. Gomez *voluntarily* entered the jurisdiction of a country whose laws he had violated." And in the same despatch he says that Mr. Gomez *voluntarily* took passage at San José de Guatemala for Punta Arenas, Costa Rica, on board the Pacific Mail steamship *Honduras*, *with the knowledge* that the vessel would enter *en route* the port of San Juan del Sur, Nicaragua." But let us suppose that Mr. Gomez had no such knowledge. It is not beyond the scope of fair and legitimate speculation to suggest that, on embarking on an American ship at a neutral port for another neutral port, he may not have possessed that information. It is not improbable that a considerable number of our own citizens, who start for Panama on one of the Pacific Mail steamships, are not able to state the names of the numerous ports at which they are to stop in different states of Mexico and Central America. It might well happen, too, that Gomez or Barundia had been inveigled by false statements to take passage on the steamer for the very purpose of delivering him to jail and

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and securely to come with their ships and cargoes to all places, ports, and rivers . . . to enter into the same and to remain and reside in any part thereof, respectively, and that, generally, merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce, subject always to the laws and statutes of the two countries respectively.

It is going very far to contend that Nicaragua was to have, notwithstanding this grant, an arbitrary execution. Stress of weather, or mutiny, or any other peril of the sea might compel the ship to put into a port not originally contemplated as one to be visited. If the element of knowledge is to be taken into consideration as a controlling factor, then the removal of the alleged criminal would have to depend upon the ascertainment of that fact. It is obvious that there is no tribunal upon which this investigation may properly devolve.

The despatch of Secretary Gresham also deserves special notice, in that it recognizes that the captain may, in the execution of his discretion, resist by forcible means "*arbitrary attempts to capture a passenger by force, without regular judicial process, in a port of call.*" He must be careful, however, lest the consequences of futile resistance to overpowering force be such as to make the resistance itself unwarrantable. As it happens in practice that the states with which we are most intimately concerned on this question have not heretofore been solicitous to provide themselves with carefully prepared papers, emanating from competent tribunals, the question may at any moment arise practically how far the master may be justified in resisting. Obviously, in the majority of cases, resistance would be futile and reckless. There are, no doubt, in our merchant navy, men in whose eyes danger does not operate to deter, but rather to stimulate; men who might conceive that, the exercise of discretion being allowed them by their Government, they would be recreant to the duty that they owed their flag if they did not oppose force to force, be the consequences what they might. Grave consequences might be made to depend on the temperament of the commanding officer at any given moment. The complications likely to arise from such a state of things might be seriously aggravated by the presence of a federal ship in the neighborhood, as was the case when *Barrundia* was demanded and slain. The delicacy of the situation needs no better illustration than that unfortunate affair. Had Mr. Misner not intervened, the

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right, at the caprice of her port-wardens or military commanders, to board an American ship, contrary to the will of her master, for the purpose of ascertaining whether on or outside the passenger list there happened to be an alleged citizen of Nicaragua who at

master would probably have been justified, under Secretary Gresham's instructions, in offering resistance to "an arbitrary attempt to capture a passenger by force, without *regular judicial process*." As there happened to be a federal ship in his immediate neighborhood, he might, without undue confidence, have relied upon prompt and efficient aid. What Grotius or Vattel may have thought or said on the subject, if anything, the commanding officer of the United States ship would probably not have cared to enquire.

These considerations might be almost indefinitely extended. But enough has been said to show that this condition of things is too uncertain and dangerous to endure indefinitely. That is a miserable condition of servitude where the law is vague and uncertain; so, at least, says the old maxim.

A number of interesting cases on the subject of so-called "asylum" might be found in the French books, and while the principle is recognized, as stated by Secretary Bayard, that there is no right of asylum on merchant ships, still the disposition of the French courts and writers has been to extend a generous recognition of home jurisdiction to vessels sojourning in French ports. One or two cases, by way of illustration, may not be uninteresting.

Half a century ago a member of the Spanish cabinet, Mr. Sotelo, embarked on a French ship, then at Valencia, in Spain, in order to escape summary vengeance at the hands of the revolutionary party, which was then shedding blood with great freedom in that country. Unfortunately for him, the vessel called at the port of Alicante in the same country, and the captain was there required, by order of the Junta of that place, to deliver up his passenger. The captain refused, and the Consul of France intervened in favor of the prisoner, but notwithstanding this intervention and refusal Mr. Sotelo was removed. The question arose thereupon whether the French Government was entitled to remonstrate and obtain satisfaction for what was claimed by some persons to be a violation of international law. The subject was much discussed, and diplomatic notes were exchanged between the French Government and the Spanish authorities. France, however, after a full explanation, conceded that the authorities of Alicante had acted within their strict legal right, and the incident had no further result. Here,

some time or other might have taken part in one of the numerous political revolutions that have disturbed that republic. Can this be the full liberty "freely and securely" to enter such ports in American ships and to remain therein which was contemplated by the treaty? Such liberty would seem to mean something more than capricious toleration. It rather appears to imply freedom from molestation and the

it will be observed, the fugitive had stepped directly from Spain on board a foreign vessel. It was not a case of a passenger, enjoying his full liberty, starting from a neutral port for another neutral port.

Hautefeuille, however, does not seem to acquiesce in the distinction between a man-of-war and a merchant ship, and would concede the privilege of extra-territoriality to the latter in the same manner that it is extended to public armed vessels.

In 1839 the Court of Bordeaux was called upon to decide a case which turned upon the following facts: A French citizen had embarked as a passenger on board an American merchant ship. On arriving at Bordeaux he lodged a complaint against the master, an American, charging various acts of violence, which he claimed that he had been subjected to during the trip. The master set up, by way of defence that, conceding the charges to be true, the acts complained of had been performed on the high seas, and on board an American ship. He insisted, therefore, that the French tribunals were incompetent, and this contention was admitted. The complaint was dismissed.

This case, however, does not go so far as the French ship *Francia* case, in which the English Courts held that they were not competent to take cognizance of a crime committed by a German master at sea, although the ship was, in fact, less than a marine league from the coast, *i. e.*, within English territorial waters. (See M. Clunet's *Journal of International Law*, 1876, p. 413; 1878, p. 16; 1890, p. 643.)

The Supreme Court of Justice of Mexico has gone even farther in sustaining the jurisdiction of the home authorities in a case which much resembles the Wildenhus case (120 U. S. Rep., p. 11), although a different result was reached. It was there held that the national courts of Mexico were incompetent to take jurisdiction of a crime committed in a Mexican port by one foreigner against another foreigner on board a foreign ship, if the tranquil-

right of the master and crew of a ship to immunity from offensive interference, so long as no disorder is created and no statute violated. But in the *Barrundia* case there was no pretence that this "full liberty" had been forfeited by misconduct, or that the peace of the port was disturbed, or that the master had violated the laws of the state. And yet the right was claimed, and conceded by the *Chargé d'Affaires* of the United States to Central America, to enter a peaceable ship and to perform a most offensive operation, viz., a search among the officers and crew for a passenger who was said to be a political refugee.

It is worthy of attention here that even the government authorities of Guatemala did not base their request for aid and comfort on any pretence of this kind. It was not stated by them that the duty of surrender and the right to demand it were alike plain; on the contrary, Señor Anguiano, the Secretary of State for Guatemala, placed his demand upon the

lity of the port had not been disturbed, and if the offender and the victim were both members of the crew (*Clunet, Droit International Privé*, 1876, p. 413). It is curious to note here that this decision of the Mexican Supreme Court reverses the judgment of the Circuit Court, which latter tribunal had taken the same view of the subject as our own Supreme Court, viz.: "When a crime or common law offence has been committed on board a foreign merchant vessel, and has disturbed the tranquillity of the port, the authorities of the country have jurisdiction. They also have jurisdiction where the parties interested have claimed their protection. Homicide is a crime which, even when committed on private individuals, threatens the security of all." In the *Wildenhus* case there was no pretence that the tranquillity of the port had been, in fact, disturbed, but it was held that if crimes are committed on board, of a character to disturb the tranquillity of the port, the courts shall take jurisdiction, and murder was there held to be such a crime. No point appears to have been made in the American case of the fact that the officers of the Belgian ship had invoked the assistance of the local authorities for the arrest of the culprit.

special circumstance that a war *was pending*, which fact, in his eyes, created a special situation, on which he relied. He wrote:

The facts referred to, Honorable Sir, show the perfect right which exists in the Government of Guatemala, *being in a state of war*, to capture Barrundia on the steamer which is anchored in Champerico. . . . Besides, by the contract which the Government made with the Pacific Mail Steamship Company, that Company should not permit the bringing or taking to Guatemala, or to the adjacent communities, *any element of hostility in time of war, such as exists at this time*.

It is not material to enquire whether hostilities were, in fact, pending when this despatch was written. It does appear that a truce had been effected between the belligerent republics, the credit of which was due in great part to Mr. Misner's earnest and intelligent efforts. The fact which deserves attention is the implied disclaimer of any right to demand summary extradition from an American ship except where actual hostilities are pending. The object of the demanding party in thus making his claim was presumably to liken General Barrundia to contraband of war. With this view of the case Secretary Blaine deals in his despatch and insists that it is not founded; it is no part of my purpose to consider that branch of the controversy.

It remains now for us only to consider how far the general rule of subjection to the local law extends, and to ascertain whether any exceptions have been engrafted upon it on principle or by custom.

Mr. Webster has considered this question at some length. He lays down the rule thus:

It is natural to consider the vessels of a nation as part of its territory, though at sea, as the State retains juris-

diction over them; and according to the commonly received customs, this jurisdiction is preserved over the vessels *even in parts of the sea subject to foreign domination*. This is the doctrine of the Law of Nations, clearly laid down by writers of received authority and entirely conformable, as it is supposed, with the practice of modern nations. . . . It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another, *is not necessarily wholly exclusive* (Webster's *Works*, vol. vi., pp. 306, 307, cited by Secretary Blaine at length).

Here, it will be observed, Mr. Webster asserts the general rule to be in favor of the jurisdiction of the state to which the vessel belongs; any deviations from this general principle being exceptions, the burden of asserting and proving them must fall upon the local powers where they seek to enforce the supremacy of local laws. All the authorities concede that these laws may properly be invoked for unlawful acts done by the ship's crew while in port, as well as for the enforcement of contracts entered into by the master or owners with citizens or residents of the country where the ship is temporarily stopping. So, too, where crimes are committed which break the peace of the community, the offending parties may not shield themselves from trial and punishment by invoking the home jurisdiction. But with these exceptions we are not concerned. They are, no doubt, founded in justice and reason, but they afford no warrant or justification for the claim that in time of peace a merchant vessel of the United States may be entered and ransacked for the purpose of finding some obnoxious person whose presence may be unknown to the captain, and who has, while on the ship, in no manner violated the laws.

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This form of summary extradition at the will of the demanding power is strongly opposed to the modern practice of surrender. No Government admits, certainly our Government does not recognize, the obligation to return a fugitive to the country from which he has escaped, unless it has bound itself so to do by treaty obligations; and in thus binding itself it has always refused to return political refugees. In all cases the party charged with crime is permitted to defend himself and to prove his innocence. While he does not receive the benefit of a trial in a strict and technical sense, a judicial investigation must be had in which his identity and the probability of his guilt must be shown. It is repugnant to the orderly and law-abiding habits of our people to hold that none of these statutory safeguards may be observed where a ship is concerned, and that the duty of surrender is absolute, imperative, and unmitigated even by a show of legal form.

Our late Secretary of State, Judge Gresham, was called upon in January of last year (1894) to lay down a rule of action for the government of masters of vessels, in order that they might act intelligently in emergencies of the character above described. He declined, however, to take this responsibility, on the ground that it was not practicable to lay down a general fixed rule applicable to the varying conditions in such cases. He did go so far as to state that "as a comprehensive principle" it is well established in international law that a merchant vessel in a foreign port is within the local jurisdiction of the country with respect to *offences* or offenders *against the laws* thereof, and that an *orderly* demand for surrender of a person accused of crime by *due process* of law, with

exhibition of a *warrant of arrest* in the hands of the *regularly accredited officers of the law*, may not be disregarded nor resisted by the master of the ship." But this proposition thus carefully laid down by this experienced jurist does not strip the subject of all its difficulties. Let us suppose a doubt as to the regularity, genuineness, or validity of the alleged order of arrest, or a question as to there being a *due process* of law or as to the right of the *accredited officers* so called, who is to resolve this doubt and settle this question? Suppose, too, that the identity is disputed, or that the alleged offender is a citizen of the United States, and denies the charge *in toto*, how are such points to be tried? These palpable embarrassments are further enhanced by the approval given to the decision of Secretary Blaine in the *Barrundia* case.

The diplomatic and consular representatives of the United States in the country making the demand are as incompetent to order surrender by way of quasi-extradition [says Judge Gresham] as the shipmaster is actively to deliver the accused. This was established in the celebrated *Barrundia* case by the disavowal and rebuke of Minister Misner's action in giving to the Guatemalan authorities an order for the surrender of the accused.

And yet may it not be asked whether the action of the Minister was so objectionable as to warrant dismissal if he merely ordered that to be done which it was lawful to do without his interference? It should be remembered, in justice to Mr. Misner, that as a preliminary to his own action, and in the honest belief that he was exercising a ministerial duty, he made the best terms that he could make for the protection and the fair trial of the unfortunate *Barrundia*.

The Supreme Court of the United States has recently considered the question of jurisdictional conflict between the nation to which a ship belonged and the port in which that ship was sojourning.

Briefly, the facts were these: A boy named Wildenhus, engaged as a cabin boy on a Belgian ship, killed another boy while the ship was anchored at Jersey City. He fled, but after a few hours returned to his ship, where he was arrested by the police of New Jersey, which police had been notified of his flight and requested to aid in his capture. The Belgian consul claimed jurisdiction for Belgium under the treaty between the two nations, and applied for a writ of habeas corpus to the Circuit Court of New Jersey. The court refused to deliver the prisoner, whereupon the case was carried to the Supreme Court on an appeal taken by the Belgian consul, where the decision was sustained. Chief Justice Waite wrote the opinion of the court, and stated what he conceived to be the law applicable to such cases:

It is part of the law of civilized nations that when a merchant vessel enters the ports of another for the purposes of trade, it subjects itself to the law of the place to which it goes, unless by treaty, *or otherwise*, the two countries have come to some different understanding or agreement. . . . And so by comity it came to be *generally understood* among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or tranquillity of the port, should be left by the local Government to be dealt with by the authorities of the nation to which the vessel belonged, as the laws of that nation or its interest should require.

The court then held that a murder on shipboard

and *in the port* came within the treaty provision as being a "disorder" that would disturb tranquillity and public order on shore or in port.

It may not be easy to draw any certain conclusion from what precedes as to the right of one of our neighboring republics to search American vessels for political refugees, where the vessel is innocent and in transit from one neutral port to another. But I would venture to suggest that there is enough to sustain the view that it is no part of the duty of an American minister to a Central or South American state to lend the prestige of his position and the dignity of his office to an act which is inconsistent with the general views, usages, and practices of our people. Laws are good and laws are bad as they represent the deliberate sentiment of the mass of our citizens. The law of nations is not a mummy embalmed in superannuated practices and artificial formulas. It is, if a science at all, a living, growing system, keeping pace with the development of civilized mankind and dealing with problems which Grotius did not dream of. Arbitrary kings, cruel methods of dealing with prisoners, the sacred duty of allegiance to the country of one's birth, have long since disappeared.¹ A nation whose

¹ The doctrine that a man owes eternal allegiance to the country of his birth came over to the States with the English Common Law, and continued to live in theory long after it had died in practice. Jurists and courts have insisted that no man could, of his own volition, sever the bond that fettered him to his native land. It is only of late years that the doctrine has been a proper subject for post-mortem autopsy, as it might theretofore be said to enjoy civil life although it was, in fact, dead. From the earliest days of our history, naturalization has been practised under laws made by Congress. The Constitution of the United States itself vested that body with the power to make citizens of alien material, by passing uniform laws of naturalization, while at the same time the Supreme

greatness rests upon a successful rebellion will not look upon popular uprisings with unmitigated abhorrence. A new order of things has arisen with the establishment of popular government in the United States. It is inevitable that we should meet with new problems;

Court of the United States felt bound to stand by ancient landmarks, and refused to acknowledge the right of an American citizen to exchange his nationality for another, although the machinery provided by Congress for transmuting citizens of other countries into citizens of the United States was in full and fruitful operation. As Mr. Lawrence states it:

"While Congress has proffered a participation in political rights to the people of all countries, and the Executive has gone to an extent, the correctness of which may well be questioned, in sustaining reclamations on behalf of naturalized citizens even in the country of their origin, and has declined to interfere for an American who had invested himself with a foreign nationality, the Judiciary, the legitimate arbiter of the constitutional question, has refused to sanction expatriation depending on the volition of the party."

In 1799 Chief Justice Ellsworth attempted to give reasons for the apparent inconsistency between the action of the legislative branch and the decisions of the courts. His argument is probably the best that could be made, but it does not follow that it is conclusive. Perhaps it was not possible to reconcile the naturalization of foreigners with the refusal to recognize the transfer of allegiance of our own citizens to another power, unless by frankly conceding that the courts must continue to follow precedents which had outgrown their usefulness and *raison d'être*, until such precedents were brushed aside by competent legislation. This is the Chief Justice's language, in support of a ruling that, allegiance being unchangeable, evidence was not competent to show that the American citizen had been naturalized elsewhere: "We do not enquire what the relation of an alien seeking naturalization in the United States is to his own country, we have not the means of knowing, *and the enquiry would be indelicate; we leave him to judge of that*. If he embarrasses himself by contracting contradictory obligations, the fault and the folly are his own. But this implies no consent of the Government that our citizens should expatriate themselves" (Wharton's *State Trials*, p. 654). It might be respectfully suggested here that while the "fault and the folly" might be those of the alien applicant for naturalization, the *re-*

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it is plain that we shall have to deal with them even to the extent of making our own precedents. We shall deal with them justly and for the benefit of coming generations by bearing in mind the precepts and practices of our Washington, by striving on all occasions to observe "the genuine maxims of an honest

sponsibility for these fell upon the Government, which, by accepting him into its family of citizens, undertook to protect him and his children as thoroughly and effectually as though his ancestry had emerged from the *Mayflower*, and from that day to this their descendants had never left American soil.

It might perhaps be "indelicate" to vex him with impertinent enquiries, but unfortunately the most thorough cross-examination as to his relations with any former prince or potentate would reveal nothing material to the subject. If his character was shown to be satisfactory, and his devotion to the principles of the Constitution sufficient in quality and quantity to make him a desirable citizen, he was entitled to his patent on proving that he had resided in the country during the statutory period. Whether the Chief Justice's reasons were or were not logically sufficient, commentators agree that the decision reached by him was sound, and that the general judicial consensus has been that no citizen of the United States can throw off his allegiance without the consent of Congress.

It may be of interest to note here that as Kings of Spain have in the olden times, by an act of royal bounty, turned the plebeian inhabitants of a whole province into patricians, with the inestimable privilege of prefixing the noble *de* to their names, so this Government has raised whole communities of foreigners to the dignity of citizenship by one stroke of the legislative and executive pen.

Thus, by collective naturalization, following on annexation of territory, the inhabitants of Louisiana in 1800, of Florida in 1819, and of ceded portions of Mexico in 1848, became citizens of the United States; so, too, by resolution of Congress, all the citizens of the Texas Republic became, without any express declaration, citizens of the United States.—Lawrence's *Wheaton*, 897.

In 1868, however, Congress passed an Act which may be considered as an epitaph upon the grave of the old common-law doctrine. It declared that the "right of expatriation is the natural and inherent right of all people, indispensable to the enjoyment of the right of life, liberty, and the pursuit of happiness," and prescribes "that any declaration, instruction, opinion, order, or decision of any officer of this Government, which denies, restricts,

and magnanimous policy." Our territory is open to all except to those whose crimes unfit them for companionship with our people. Is it claiming too much to demand that the flag at our masthead should, even in a foreign port, symbolize something of our origin, traditions, and practices? Or should it be no more

impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this Government."

Shortly before that year (1868) under the stress of the same influences that produced the Act last cited, treaties to the same practical effect had been made with various foreign countries, such as the North German Confederacy, Bavaria, Baden, Wurtemberg, Belgium, Hesse, and Austria. Finally England, following our example, sacrificed the time-honored fiction to which she had clung so stubbornly, and on May 14, 1870, the Imperial Parliament declared that any British subject, who had prior thereto or might thereafter become naturalized in any foreign State in which he happened to reside, should be deemed to have ceased to be a British subject, and be regarded as an alien.

While this legislation removes the chief objection in the way of the American citizen who may choose to expatriate himself and to become naturalized abroad, certain incidental questions are still unsettled. President Grant, in his Fifth Annual Message (in 1873), called attention to the fact that Congress had not indicated in the statute, nor has it done so since that time, what acts were deemed to work expatriation.

Students who may be interested in pursuing this subject will find an interesting case recently decided in Louisiana by Judge Billings (*Comitis v. Parkerson*), June 17, 1893. It turns upon the vexed question, how far the status of an American woman is affected by her marriage to an alien. The learned judge reaches a different conclusion from that reached by Justice Brown (now of the Supreme Court of the United States) in the case of *Pequignot v. City of Detroit*, XVI. *Federal Reporter*, p. 211. These, however, are merely incidents to the general question, and are of minor importance from the rarity of their occurrence. The chief difficulty arises from the fact that a large number of Europeans seek refuge in America and become citizens for the sole purpose of avoiding military service, which demands the personal presence under the flag, of substantially all able-bodied men. It is not to be wondered at that foreign governments should look with jealousy upon the facility held out to their people for evading the heaviest

nor less than an ornamental device which loses its meaning as soon as it floats in the slip of a foreign wharf? The question will have to be decided at some future and perhaps not distant day. We may confidently hope that it will be settled calmly, deliberately, and justly; it will then surely meet a response from and the hearty approval of the American people.

Since the above was written another episode of the Barrundia order has occurred. Another Central American refugee has been demanded and taken from a Pacific Mail steamer by the Government of Salvador, and, it is said, summarily put to death on landing.¹ Whether our Government will be disposed in the of all burdens by a transatlantic voyage. The fact that during the last twenty-five years we have maintained amicable relations with the continental nations of Europe, and fairly adjusted all differences arising out of this state of things, reflects high honor upon our diplomacy. (See Secretary Frelinghuysen's despatch to our Italian Minister, December 16, 1883.)

¹ The details of the occurrence, referred to in the text, are taken from despatches dated San Francisco and Washington, September 10, 1895, and printed in the *New York World* of September 11th. From these despatches it appears that the steamer *City of Sydney*, which had just arrived from Panama, brought particulars of the capture, by the Salvador authorities, of Florencio Bustamente, one of Antonio Ezeta's favorite lieutenants. It was believed by Spanish Americans who arrived on the *City of Sydney*, that Bustamente had been torn to pieces by an infuriated mob, or publicly shot in the streets of San Salvador. The surrender of Bustamente by the people of Nicaragua was supposed to be in return for the friendly action of Salvador in the Corinto affair.

The Washington despatch stated that although no official report of the forcible seizure on board an American steamer of Bustamente by Salvador officials had reached Washington, it was believed, from the presentation of the facts made in the report, that the seizure was lawfully made, and that the United States could not make an international issue in the case. The writer of the despatch cited, in support of this hypothesis, the language used by the late Secretary Gresham, in the letter to the President of the Pacific Mail Steamship Company, which letter is referred to in the text.

future to take part in furnishing such bloody entertainment to a lawless and cruel mob time will show. But it must be a subject of grave concern to us that such an anomalous situation should exist. Our Department of State has not been governed by fixed harmonious views in this important matter of surrender. The weight of authority thus far seems to be in favor of yielding to the claims of demanding governments, but it would be idle to deny that another administration may be disposed to adopt a different rule and to follow the precedent created by the dismissal of Mr. Misner to all its logical consequences. The worst that can befall us is that the law should be vague and uncertain. Possibly new treaty stipulations might be effective and salutary. The restless republics with which we have to deal might find it to their own interest to put a curb upon themselves. The rebel of to-day may be the successful patriot of to-morrow. The statesman who signs a treaty to-day may to-morrow, like Barrundia, Gomez, and Bustamente, turn anxious eyes to the flag of the United States and wonder whether its majesty can save him from the angry crowd that clamors for his blood. It has been said long ago that the distance is short between the Capitol and the Tarpeian Rock. It might prove a real service to our neighboring republics to teach them by treaty restraints, as we have taught them by our recent history, that the cause of free government is not aided by bloody reprisals. Clemency after the battle is the wisest of policies. If we can engraft this principle upon our diplomatic records and conventions, we shall add another to the list of our services to the world.



IV

INTERNATIONAL LAW ¹

IT may not be inappropriate—it is certainly encouraging—to preface the discussion of legal subjects by the payment of tribute to the greatness and glory of our common profession. Here, at least, we shall all agree, differing perhaps from a considerable portion of the human race in our estimate, but asking for no better evidence of its exceeding usefulness than the denunciation and ridicule which have been showered upon it from immemorial time. Great wits and small ones have honored our calling by their malice and shown its strength by the innocuous results that followed the discharge of their noisy but harmless artillery. Great kings have found that they could subdue armies, fetter the press, and dazzle the world by their exploits, yet fail to conquer the bar. Napoleon himself, the Titan of modern times, was helpless before it, and failed to cajole or terrify it into silence. He could make decrees from Berlin and from Moscow, and direct the passage of such laws as he deemed wise to have enacted, but in the end it was the lawyer who interpreted those laws and construed those decrees. For the law is the spiritual monitor

¹ Address delivered before the alumni and students of the Law Department of the University of Pennsylvania.

and guide of nations, nay, the spiritual life itself; her ministers, however unworthy, cannot but represent some of her majesty. The law is the concrete expression of justice, the great ligament that holds communities together; the advocate is her mouthpiece and interpreter. His the function to keep alive the fires of human liberty, and as he succeeds or fails in this so shall the honor of the bar rise or fall. The law is the antithesis of force, they cannot co-exist on equal terms. Force may triumph for a day, but only for a day. As with the passing centuries, the world grows wise, it learns the lesson more deeply, that force is the most expensive and most costly, the most uncertain of expedients for righting a wrong. The poet-philosopher of the Augustan age boasted as one of the titles to glory of his imperial master, that the forum was free from lawsuits. A golden age, indeed, if the absence of litigation really meant that men honestly performed their obligations without coercion; a happy state, the existence of which we may well doubt. Perhaps the knowledge that courts did exist, which were open to the oppressed and injured, might account for this phenomenon; perhaps stagnation in the lawyers' business meant that the general activities and enterprise were paralyzed by war and the pursuit of glory; perhaps, too, the poet exaggerated, as poets sometimes will. We must remember that the bar of that day resembled only in name the bar of to-day. Justice, with bandaged eyes holding the impartial scales with firm and steady hand, stands as our emblem. Apollo, flaying Marsyas who had dared to compete with him in performance on the flute, stood in front of the Roman rostrum, a ghastly spectacle indeed, but whether a warning to the client or his

counsel, history does not tell. Even this cruel operation could not cure the flute-player of his love for art, nor rob him of his gifts. At least, tradition says that after it had been performed, and the hapless artist bereft of his natural covering, the latter was turned into a bag, and when filled with air gave out sweet sounds if moved by the musical waves of a melodious flute. Thus did the victim against lawless violence protest, and as far as might be discourse in favor of the liberty of speech.

The history of a free people is the history of its bar. No nation, at least in modern times, has ever achieved its freedom without the aid of the advocate. With us this is a truism, and needs no demonstration. From the earliest days we find our brethren in season and out of season, at the risk of life and liberty using their gifts in favor of freedom and against oppression. While we note with regret that the greatest of our national heroes, Washington himself, had not been provided with a legal education, it is to his credit that he surrounded himself with eminent lawyers, such men as Jefferson, Hamilton, Adams, and took their counsel. With these men to guide him, personal knowledge of the law was scarcely necessary. He was able to act judicially, and, as often happens with good and honest judges, the abundance of learning in the counsel supplemented any lack of learning in the court itself.

That there is nothing in legal training to unfit the advocate for sterner duties in the field a roll of honorable names, conspicuous in war and peace alike, is with us to prove: the truth is shown in our history that patriotism and devotion are not enfeebled by the pursuit and mastery of legal studies. *Cedunt arma*

toga is not more true than the converse of the proposition. The same men have dropped or taken up the toga or the sword as the necessities of the nation demanded; they have promoted the arts of peace, and have stood out as the leaders in the conflicts of war, eminent and great in both alike.

But it is especially in our own day that the usefulness of the bar has been conspicuous and important. The close relations of different nations have removed ancient prejudices and quickened latent sympathies into vigorous life. War has become less frequent, not only, I might say not so much, because of the growing regard for human life and impatience of human suffering, but because of the commercial spirit that has taught men to calculate the cost of armed conflicts. Few nations can afford to spend the money necessary for the outfit of an army. It was easy enough and cheap enough to send one hundred thousand men into the field so long as they could use the muskets that their fathers had used, or the spears and swords that were deadly enough but inexpensive. When, however, the changing fortunes and feverish competitions of rival nations require endless novelty in guns, fortifications, methods of transportation, of attack, and of defence, greater care for the injured, better food for those who do the fighting, and less freedom in dealing with the property of non-combatants, a new order of things arises. The perplexities of rulers serve to keep the temple of Janus closed. Homicide becomes absurdly expensive. Glory loses prestige as the cost and risk rise to unheard-of proportions. Personal prowess hesitates when rifles kill at 6000 yards; strong towns lose their confidence when Krupp guns thunder destruction before they are in sight and treat ancient

defences with brutal and ruinous contempt. The banker in Lombard or Wall Street raises his voice and threatens to cut off the needed supplies, while the degenerate combatant prefers the farm or the workshop to the hazards and discomforts of a campaign in midwinter. The instinct of destruction is still present, for men are still human, the temptation to invoke the *ultima ratio* of kings still agitates the breast of rulers, but fear of results is as potent as the love of peace. They arm millions of men to show that they are ready for war, while year after year they proclaim their pacific purposes, and their readiness to enforce these purposes at the cannon's mouth.

There is, indeed, no more instructive and edifying spectacle than this long-continued abstinence from war when so many are ready to accept it if only some one of the parties will throw down the gauntlet. Fermentation thus indefinitely protracted without explosion is a novel and cheering spectacle which must fill the world with amazement and the bar with pride.

For, it must be remembered, the self-denial of emperors and kings does not remove the causes of irritation which once required blood-letting in nations as in persons. Differences will inevitably arise. The ambition of the strong is not dead, the sharp line between right and wrong is not more manifest to-day than in the past. Weak nations are as apt as ever to offend by their exasperating debility, while territorial expansion appeals with ever-increasing eloquence to great and small. The rush to Africa and the eager haste of the powers to seize a share of the Dark Continent without a dangerous fillip to the susceptibilities of rivals is an illustration of this. The old countries are being sorely crowded. America objects to being

partitioned, and the chief of American nations does not hesitate to file a *lis pendens* on the hemisphere. A war between any two powers might involve the world in a destructive conflagration wherein old landmarks might be obliterated and venerable constitutions shrivelled up like a scroll before the fire. How, then, shall the world settle its quarrels and contentions, save by calling the lawyers to talk the matter over, and to arrange affairs according to the principles of "natural justice"? True, no man has yet been found who could, or at least would, accurately define what these principles are, where they begin, and where they end, what their origin, and how they sprang into life or grew into recognition. Their starting-point is a mystery, their development, if they be what they claim, is a misnomer. But, fortunately for the world, a shibboleth need not be intelligible: perhaps it commands respect in the inverse ratio to its intelligibility. Its plasticity recommends it to those who might refuse their acceptance if all agreed as to its meaning. Even to-day, although international law, so called, has reached the high-water mark of fashion and popularity, who will venture a definition? Is it a science at all, is it in any sense a law, or a system? How can that be a law which finds no place for a superior or an inferior, which recognizes no sanction, submits to no tribunal, and shows itself in the critical periods of modern history to have been little more than a harmonious setting to modern music of excellent rules which are easily misunderstood, more easily evaded, and most easily perverted to base uses.

The eminent Lord Chief Justice of England has within the year added his own definition to the many which had heretofore been presented as solving the

problem. Lord Russell says that "international law is nothing more nor less than what civilized nations have agreed shall be binding on one another as international law." A higher authority for a legal definition could not easily be found, not only because of the eminent judicial position of the author, but because of his cultured abilities, his large experience, and known keenness of analysis. If we must abide by any one attempt at definition, we might, out of respect for the great jurist who honored us with his presence a few months ago, accept this formula. It is at least free from affectations of speech; it does not offend by any effort to cover up faults of substance with ambition of language. And yet, if it be not improper here to suggest a doubt as to the practical aid thus given us, we might well ask ourselves if, owing to the inherent difficulty of the task, this eminent jurist has not failed to simplify the subject to any appreciable extent.

"What civilized nations have agreed shall be binding on one another" is international law. This seems so obvious that criticism blushes at fault-finding as though it were caught *flagrante delicto* in the commission of some moral wrong. But the very words used are big with potential deception. Who shall say whether any given nation deserves to be called a "civilized" nation? The line of demarcation may be as difficult to draw as it is in private life to draw the boundary between a gentleman and one who is not a gentleman, a wise man and a fool, a scholar and an ignoramus. The extremes in each class are easily recognized and classed. But the sinner may in a moment of inspiration rise to the heights of the saint: what label shall we in general terms affix to his character? George IV. was the "first gentleman of Europe"; shall we accept him as

a type like Sidney and Bayard? Benedict Arnold lives embalmed in the contempt of a great nation because of the one act that sullied a brilliant life, but another great nation received him with open arms, allotted him an honorable livery, and treated, or affected to treat him, as a patriot and a hero! Whose standard was right, whose was wrong?

Probably the "civilized nations" will none of them accept Turkey as one of their guild; nay, they all treat her, by reason of this excommunication, as they will, simply because they are not dealing with one another. It would, indeed, be a one-sided contract if Great Britain or France, confessedly civilized, should feel bound to treat the Turk as though he were a Christian, while he recognized no authority, and bound himself to no rules of good behavior. And yet, if there be a moral sanction in these rules, how can they be taken up or laid aside according to the station of the party whose rights are involved? But the difficulty extends much farther. Granting that the definition does not prevent the abrogation or expulsion of Turkey, nor the arbitrary and violent seizure of African territory, who shall say when a nation is so civilized as to come clearly within the definition? Shall she herself have a voice in the matter? If her ports are about to be bombarded or her territory torn from her by violence, may she say, "Stop, I am civilized, and the rules do not permit you to treat me in this brutal manner." Or may the unquestionably civilized power justly assume the judgment seat, and retort, "No, you are not civilized, you have no habeas corpus, no trial by jury, no liberty of the press. You do not belong to our privileged brotherhood of states; *ergo*, you shall be taught reason at the cannon's mouth." It is much to

be feared that unless the balance of power, a big brother, or some other *Deus ex machina* should appear on the stage, the bombardment would have to go on, the rules being suspended.

Nor is this all. The rules, it is said, are binding on the civilized nations who have agreed to be bound. But what becomes of the civilized nations that have not agreed, because they came into the world as governments too late, or ripened into salutary civilization so recently that they have not had an opportunity to recognize the binding force of the rules? This Republic, for instance, while generally recognized as one of the civilized nations, even if peradventure given to over-freedom of speech, dissents from some of the rules—those on privateering, by way of example. What is her status under the rules? How far do they apply to her? Rules of international law, if they mean anything, are intended to promote the interests of the nations that recognize them, to the extent of giving them a just equivalent for what they concede to one another. But the United States as a nation, by its extent, its resources, the nature of its government, its remoteness from European communities, its natural sympathies for weaker neighbors, must necessarily take a different view of many subjects from others in the civilized combination. Shall she be voiceless when right and justice according to her standpoint are violated under the generally accepted rules? Or may it not be fairly claimed that so important a factor in the society of nations shall have its influence and be recognized, even if old ideas must be modified, ignored, or set aside?

Much of the misconception on this subject arises, as is often the case, from a confusion in terms. Not only

is there no international law in the true sense of the expression, but the expression itself is misleading. The *jus gentium* is the *right* of nations, or, as it is termed in the continental books, *le droit des gens*. As individuals may be said to possess rights inherent and inalienable,—at least our great Declaration so states as a proposition beyond dispute,—so it may be said that each nation has the right to preserve and defend its existence, to assert and maintain its independence. Certainly in theory this may not be gainsaid. From this *right* must of necessity arise and grow corresponding duties on the part of others. To what limit this right may be extended, how far it may be circumscribed, to what extent the “pursuit of happiness” may justify expansion, how far the right of self-defence may interdict its indulgence, these are the problems involved. No great nation has ever hesitated to pursue her own advancement where it could be done without danger and without shocking the public opinion of civilized mankind. But great and powerful nations have learned by experience that self-denial might be more profitable than the application of brute force, provided a like restraint was observed by their neighbors. International law, if there be any, is the law of enlightened self-interest, guided by prudence, and by the consciousness that peace has marked advantages to recommend its preservation. It is a curb upon rashness, a moral adviser against brutal measures, a reminder that the fortunes of war are uncertain. The great purpose of and incentive to a system of intercourse based upon mutual respect for public rights is the approximation among nations to the methods generally accepted among men in their individual capacity. That is to say, the governments

of to-day are willing, as a general proposition, to recognize the existence, in times of peace, of ethical rules which it is to the general advantage that all should obey. And as no ethical system devised by the wit of man has ever approached in beauty and perfection the Christian religion, the principles of the faith have been accepted, with limitations of place and circumstance, as the groundwork of international rights and duties.

Evidently it is no easy task to define such a system or science as this. It is easier to state what it is not than what it is. It certainly is *not* a system of law, if any known definition of law has preserved its value. No rule of action may properly be termed a law, which has no sanction. A rule, to be efficacious, must be imposed by a superior upon an inferior: there must be the fear of punishment attached to its violation, or the hope of reward must encourage obedience to its mandates. When we speak of the divine law, the federal law, the state law, we use words which present an intelligible idea. Even if we speak of the law of nature we are within the truth, for Nature punishes the transgression of her edicts with unfailing severity. But international law is different from all these, and can no more restrain the anger of an aroused people, than King Canute on his throne could drive back the waves that took no heed of his royal commands.

If, then, I have ventured to criticise the language of the eminent Justice in his attempt to formulate his own idea of international law, it is not from any doubt that it was as accurate as the nature of the case allowed, but simply because it is not, or at least has not yet been possible to define international law on the theory that it is a law at all.

Under these circumstances it should be obvious that

I cannot undertake with any confidence the task which so many have attempted without absolute success. I would venture, however, to describe my own imperfect conception of what is termed international law, by saying that it is the result of an implied agreement among civilized nations to abide by those practices which have proved most conducive to the promotion of profitable intercourse in peace, and to the mitigation of suffering and hardship in war. I hope that I am not overrating my own powers of critical analysis when I add to this the confident assurance that I could detect many flaws in this rather clumsy definition had it been presented by any other person than myself. Possibly even this circumstance may not be absolutely prohibitory, when time and reflection have suggested needed improvements.

How far the Christian religion has contributed to the formation of the *jus or right of nations* may not be easy to determine, but it does, nevertheless, seem clear that no such system could have existed when Rome was mistress of the world, or could exist to-day but for the lofty principles inculcated by that form of religious belief. It is an offshoot of the teaching that men are brothers even when they live on the opposite banks of a river, even when they speak a different language, even when they present wide divergences of morals, tastes, habits, and customs. If men acting in their political capacity were governed by the same rules and principles as they are in their private lives, Christian ethics might be a much more potent factor in the adjustment of international relations. But, unfortunately, America is not the only country where public men claim the right to own two consciences, one for the guidance of their public, another for the di-

rection of their private life. Great ministers and kings have deemed it lawful to deceive, cheat, despoil, and destroy their neighbors with such happy results that to say, "Honesty is the best policy" in the public conduct of nations would betray ignorance or suggest sarcasm. Probably no great power in Europe may boast that its record is entirely free from blemish. After the treaty of Berlin a few years ago, the French ambassador returned home with the boast that France had kept her hands clean, which was certainly true if cleanliness and emptiness had been interconvertible terms. But it is no imputation upon her citizens to add that they might have preferred some substantial evidence of practical diplomacy,—an island in the Mediterranean, for instance,—even if the perfect purity of her motives and conduct had been thereby made less apparent. We ourselves boast, justly, I think, that our conduct of public affairs has been, on the whole, conspicuously free from reproach. Yet this is what one of our reliable historians, an American of Americans, has to say: "In the end far more than one half the territory of the United States was the spoil of the Spanish Empire, rarely acquired with perfect propriety. To sum up the story in a single word: Spain had immense influence over the United States, but it was the influence of the whale over its captors, the charge of a huge, helpless, and profitable nation." —Adams, v. I, p. 343.

It may be interesting here to note that the attempt was made during the present century to subject international relations to the exalted precepts of the gospel. Alexander, the Emperor of Russia, after Waterloo and the resulting restoration of Louis XVIII., seems to have been deeply affected by his and his

allies' triumph over the giant whom they had overthrown. He determined that, so far as lay in his power, he would see to it that the world should be governed by Christian principles, and, carrying his theories into practice, he proceeded to convert the king of Prussia and the emperor of Austria to his own way of thinking. Poland was not represented in these royal and imperial conclaves, except by those who had themselves partitioned her. A league was formed by which three mighty sovereigns agreed to consider themselves as members of one great Christian family; their real and sole sovereign was Almighty God, whose delegates they declared themselves to be. Thenceforth, they would tend their respective flocks according to the Word of God. Naturally, there could be but one appropriate title applied to this association, and it was accordingly known as the Holy Alliance. England refused to enter into this impressive and picturesque concert of potentates, her representative (Lord Castlereagh) having written that the Emperor Alexander was out of his mind, but others gave their assent to the initiation of Christian politics, and the law of charity was thenceforth to rule the world.

But the effervescence which prompted this fine innovation was soon over. Napoleon was chained to his weather-beaten rock, and it was not likely that he would ever be released except by death, a contingency to which none of the parties to the new dispensation objected, as he would then no longer be dangerous. Security of tenure is a conservative adviser. When the recently shaken thrones had been repaired, and their owners became firmly seated, it was evident that the pestilence of liberal ideas must not be permitted to spread. The divine power of kings and emperors

was so valuable to the world that it should not suffer jeopardy at the hands of turbulent people who wanted the liberty to speak, to write, to think, to come and to go at their own will. Reaction must be put down by the royal and united brethren, and it would have been put down and stifled, even in America, but for the timely declaration made, in apt terms, by President Monroe to Congress in 1823. In Europe the Alliance succeeded in its efforts to suppress the clamor of the people, and for some years to come the great monarchs could contemplate with satisfaction the fruit of their common efforts. The Holy Alliance became, in Mr. McMaster's language, a mutual association to show that diplomacy was less selfish or kings less ambitious, or international law more certain or more efficient than before the articles had been signed.

Their failure to improve the moral character of international relations should not be deemed of any significance except to show that spasmodic attempts, born of temporary excitement and peculiar surroundings, accomplish but little, in the long run, for the improvement of mankind. Self-interest, self-preservation, and a prudent apprehension of disastrous changes are not the only factors in the solution of weighty problems. They may, in a measure, be productive of good results where wholesome fear acts in the direction of self-restraint. It is manifest that if all the crowned heads of Europe had, at that time, agreed to administer the weighty matters entrusted to their hands on general principles of enlightened Christian ethics, and had respected the obligation of their mutual bond, the world would have been better and wiser and happier. And so would society be better and happier if all the members joined together

in a solemn league to obey the Decalogue and live up to the sublime heights of the Sermon on the Mount. But the practical difficulty would probably arise out of the failure of men to overcome the laws of nature which prompt them to violate the moral laws, notwithstanding their promises of amendment. Fortunately, courts and officers of the law are present to supplement the imperfect execution of excellent intentions where individuals are concerned, but this important element is lacking where royal heads find mischief for royal hands to do. So the emperors and kings of the Holy Alliance might adopt noble maxims of conduct, with excellent intentions, and fail to carry them out with equally excellent intentions; they were the lords of the occasion, the masters of the situation, and, worse than all, the sole interpreters of the rules which they professed to follow. It is hardly necessary to say that conscientious men have committed atrocious acts with unimpeachable motives, and have found in the sublime precepts of religious faith apologies for measures which are written in crimson on the pages of history. It is not enough, then, to find the masters of the world setting out to reform international relations according to the most approved rules. Certain plants, and those the most enduring, are of slow growth. They thrive on the summer rains and the summer heat, but they grow strong and enduring only when they are able to stand the test of storms and cold. No law, no system of laws, no scheme of universal political ethics, may live unless it be ratified by experiment and approved by lapse of time. The confidence of the world is not easily won. The people are not easily charmed by sweet promises and dulcet protestations. They realize that the

popular view is not always the kingly or imperial view, and if they never knew it until the Holy Alliance undertook to consecrate the divine authority of rulers, and to put down by force the aspirations of the masses, they then learned that different points of view often lead to opposite results. They may well prefer slower international processes to sentimental protocols, and ask, with Anglo-Saxon directness, whether the innovations are likely to pay: not a picturesque view, indeed, but one that saves trouble in the end by forestalling rash experiments.

It may in truth be said that international law has grown, and is likely to develop much as the Constitution of Great Britain and the Constitution of the United States. These differ, I need hardly state, in the important particular that the one is written, and the other exists only by tradition. But the difference is less in substance than in name, for the stubborn conservatism of the English race and their strong love for precedent make that stable and enduring which would be evanescent and temporary with a differently constituted people. Our Constitution, on the other hand, left the framers' hands in outward form a skeleton, which it became the duty, most admirably discharged, of the Supreme Court to clothe with flesh, to inspire with life, and to endow with motion. Its written formulation is but a brief declaration of principles to which legislation must conform, but which, with its marvellous terseness and pliability remains in unfettered activity ready to expand as the necessities of a growing nation demand. In this do these constitutions differ from the hand-made products of continental Europe. The written schemes of Sieyès, for instance, were ingenious in the extreme, and were

written in a few hours; they lacked but one thing,—they would not work in practice. The different parts of the beautiful mosaic fitted each other with artistic exactness, but alas! like a toy boat on a real ocean, they went to pieces as soon as they were tried for the business of a great people's political life. So must it be with international law. It is in no man's—no nation's—power to make it or add to it without the acceptance of general civilized opinion, and it cannot be so accepted until time and experience have demonstrated its fitness. That additions must, from time to time, be made to any international device cannot be disputed without condemning the actual system to death by anæmia. If the world moves, any method or scheme of adjusting the relations of its component parts cannot remain motionless, especially when young and vigorous nations are added to the family, and by their restless activity disturb the old conditions of paralyzed equilibrium. Our own country demands recognition by her commanding position as queen of the western world. She does not require the exchange of courteous protocols to assure her of that recognition. It is said of General Bonaparte that a treaty of peace was presented to him after one of his dazzling Italian campaigns, in which proposed treaty was an express recognition of the existence of the French republic. He struck out these words, because, as he said, the French republic, like the sun, needed no such acknowledgment; she was, like the sun, visible to all mankind. The Republic of which we are citizens does not need to be told what she is, nor what her rank, nor how far her fiat is the law of two continents. She cannot be ignored, nor her legitimate influence minimized. It is not too much

to say that no revision of ancient rules devised by Grotius and Puffendorf and Vattel will be complete without amendments and additions from her. To ask nothing that is not right, to submit to nothing that is wrong, was always a rule of our Government, and is to-day. We shall be wise and remain strong if we adhere to it. In the catechisms of Napoleon's day, the children were required to give special thanks, because the Almighty in His mercy had vouchsafed so excellent a ruler to France. Let us hope that, as years roll on, the world shall become so much happier and better because of our being part of it, that other nations may, with grateful hearts, bless the Providence which inspired the fathers with wisdom to lay the corner-stone so well. It only remains for the children to love the work thus begun with earnestness enough to preserve and protect it against enemies from without, and the more dangerous foes within. Then shall our mission be in the way of glorious accomplishment.

International law, if it is to keep step with the progress of mankind, must take into account the fact that the balance of power has passed from the throne to the people. Whether for good or for evil, the royal or imperial crown, with scarce an exception, is held by gift. We see, at times, glimpses of mediæval reverence for the great office of ruler over a nation, and the ruler himself sometimes astonishes or amuses the world by mediæval claims to a Heaven-bestowed dignity. But the gracious Queen who has so worthily and so long held the sceptre of Great Britain claims no title to her dignities and her palaces, outside the laws of the land. No one fact in modern history shows more strikingly the changes wrought by time than the fact that the successor of Queen Elizabeth is queen by

virtue of an act of Parliament, which may be unmade as it was made; while across the channel the palaces of Louis XIV. are occupied by a reputable gentleman, recently engaged in business, who, for a brief term of seven years, executes the bidding of a plebeian legislature. When we recall the fashion in which the Virgin Queen and Le Grand Monarque treated the law-makers of their day, we need no other reminder of the radical changes that have marked the transfer of power from the king to the people.

Obviously such vital differences in political conditions, the world over, must have their influence on international law. The moulding of the system has passed into other and possibly ruder hands. The niceties of diplomacy have assumed another shape, or more properly have disappeared with the elegant forms that accompanied and made part of them. Directness of speech, open explanation, frank statement of what is denied or objected to, are becoming part of international law, or at least of international procedure. We, of America, have done our international business without the intervention of professional go-betweens, and we have not thus far had cause to complain that we had no experienced diplomatists to embarrass our relations with foreign powers by their ponderous and dilatory methods. The secrecy of the old style cannot exist when the Press is free. We cannot well imagine the king of one nation subsidizing the king of another for any length of time without a publication of the fact, with its necessary consequence of putting an end to the relation of master and servant. Yet Charles II. was the recipient of a salary in French gold, which he spent with royal profusion in every way, except in the way

of benefiting his people. This fashion of regulating foreign relations and of settling international differences may be said to have disappeared.

That the gross form of bribery here alluded to was exceptional may be granted, but it cannot be denied that the personal relations of sovereigns had much to do with the intercourse between nations, and to that extent affected international law. The situation of a whole people might be changed, and often was changed, by a marriage. The kingdom of France really became such by happy alliances adding duchies of vast extent to the central power with as little ceremony as a neighbor's farm is annexed with its chattels to the lands of an owner who desires territorial expansion. France virtually annexed Spain when the king's son, Philip, ascended the Spanish throne. But a war of gigantic destruction followed the mere suggestion made in our day that a German prince might take the place which Philip once filled. It is true that the suggestion was afterwards withdrawn, and the wrong of initiating a war without necessity was imputed to France. Yet it cannot fairly be doubted that if the attempt had been made to place this German prince at the head of the Spanish nation, the principles of international law, as generally accepted and understood, would have been violated. For if there be one principle which stands out to give the appearance of substance to this vague and shadowy law, it is that the equilibrium of power must not be disturbed. This may be said to be the *fons et origo* of the whole plan. The religious observance of the rule is indispensable. *Noli me tangere* is the golden maxim which permeates and gives life to it, and general acceptance; a maxim, too, that is not confined to the

narrow limits of an actual injury, a direct assault, but, with the elastic force of every great principle, insists upon investigating remote and apparently unimportant facts. And it is, indeed, vital, for its acknowledgment alone preserves the peace of the world. How long, think you, would Holland retain her independence but for this? She is filled, it is true, with a brave and patriotic people, but the German Uhlan would water his horses in the picturesque canals of The Hague, and the *Watch on the Rhine* would be sung in that ancient city's cafés long before the dykes were opened to drown the irresistible foe. How long would Belgium retain her autonomy and flourish in art and wealth and a prosperity all her own, if the tempting prey were opened to the neighbors who, in the past, made her a part of the French nation? But to touch Holland, or Belgium, or Switzerland is to disturb the equipoise, and an attack upon either would be resented as swiftly in London as though a French or German fleet were threatening the coast of England.

All which amounts to no more than saying that self-protection and self-preservation constitute the cornerstone of modern international law. This instinct is as strong in communities as in individuals, and will, when aroused by real or imaginary perils, sweep away forms and law as worthless encumbrances if they interfere with their first duty and most valuable right, the duty to resist aggression and the right to live.

Utility is the chief ligament that binds together into something like systematic arrangement the provisions of international law. In the complicated European affairs of to-day, with nations closely approximating each other in financial resources and, therefore, in military power, some concession by each to the other

must be made in the form of self-denial. To live in the family of civilized nations, no power shall appropriate the territory of a weaker neighbor without the permission of the other parties in interest. This permission may be obtained by a successful war, as was done until and including Napoleon's time. But he closed the era of the great conquerors who dispensed, in the hurry of an agitated career, with the usual forms of international courtesy. It is not likely that until the present system is radically changed, a victorious emperor or king will tear down, build, remodel, patch up, or create thrones as the requirements of his policy or the importunities of his relatives might require. "The House of Braganza has ceased to exist," was all the notice that he deemed it necessary to serve on the parties interested, or on the world in general, when it suited him to abolish that ancient family; nor is it probable that any other military genius will carry on war at the cost of others, and reduce home expenses by levying contributions far in excess of the actual and necessary disbursements to which he had been put. International law has, at least, benefited the world in this, that the moral sentiment of mankind finds an expression in the practices which civilized nations have sought to establish among themselves for their mutual guidance and mutual interest.

It is now chiefly by treaty that accessions of territory are had. The advantages of such treaties as those which followed the downfall of Napoleon are manifest. They consecrated a distribution which silenced opposition by its generous equity. That generosity was exercised at the expense of other than the contracting parties; but the equilibrium that had been so unduly disturbed must be restored, and it was done probably

with as little harm to the smaller factors in the problem as was consistent with its solution.

Returning for a moment to the beginnings of international law, we find that self-preservation and utility are at its source. Indeed they constitute its *raison d'être*. For while we may say that it is the preserver of peace, and the refuge of the weak, the same story is told under a changed name. The strength of the weak lies in the jealousies of the strong, and the preservation of peace in the greater benefits that nations can reap from the quiet pursuits of commerce and agriculture. A proper apprehension of the advantages which nations derive from a husbanding of their resources, and an economy of men and treasure, does more for the happiness of the world than the most voluminous treatise on the rights of war and peace. An intelligent book on political economy is really a demonstration of war's futility. The value of a human life may be computed in money, and shake the purpose of the potentate who meditates a war. It is not only of the royal head of the animal kingdom that we may say, "A living lion is worth two dead." It is true of human beings as well. The would-be conqueror may not be deterred by humanitarian pleas, nor hesitate because of brave men's blood and women's tears, both shed for his caprice. And yet he may hesitate at the cost of an armed man if he computes the value of the man as well as the expense of the accoutrement.

Nor can it be fairly gainsaid that, with our progressive civilization, which means the more general diffusion of education, a broader, finer, stronger moral sense has grown up among the nations. It shows itself in many ways, and breathes its purifying spirit

into the dry tomes of the international law writers. War has lost some of its horrors because humanity protects the wounded prisoner and cares for him as though he were a forgiven foe or a recovered brother. Human slavery is dying out, and the traffic has become almost a record of the past. Unprovoked attack upon a weaker enemy is less frequent than of old, not only because of the danger of arousing defenders for the weak, but because of a decent regard for the opinions of mankind. One short century has wrought a change in these respects that almost staggers belief. The shocking absence of humanity that once characterized the conduct of refined nations seems inconsistent with anything but barbarian depravity. And we may, perhaps, venture the boast that at no time has the intercourse between members of the human family been so near the Christian ideal, far removed though it still be from its moral beauty, as it has been since the people have been the predominant element in the conduct of the world's business. The heart of the people beats with more generous pulsations than that of the artificial society which acquired and so long kept control of human actions. Torture was never the people's instrument of justice, although it was the kingly implement: cruel and unusual punishments disappeared from the statute books as soon as the people's strong hand wrote the laws. War became humanized, so far as its inherent brutality permits, as soon as the people became the masters. For it was of old the people who suffered the torture, fought the battles, paid the taxes, and bore the burden of the day and the heat. Small wonder if they have learned that they could improve upon the old devices when the class that made the harsh laws and imposed the

heavy burdens never felt the edge of the law nor the weight of the burden.

With the people's reign new ideas have come to the front, and old ideas have gone to the rear. True bipartite, tripartite, and quadrilateral treaties and alliances may still be made, and the people may not be told to what they have been committed; but even in those countries where such contracts are made, it is not quite certain that when the decisive moment comes the masses may be moved with sheep-like docility. Then, too, a new and disturbing element has entered the fold,—a young, restless, growing nation, impatient of forms, a lover of action, a partisan of justice. If left alone one people will not hate another people. The resentments of monarchs are not always echoed in the hearts of their subjects. Our United States has given a practical example of what may be done for peace by a nation that is able to be strong in war, for we have an international law binding forty-five States together under a written treaty. Our differences are settled by a tribunal of arbitration that deals with the communities as freely as it would deal with the individuals that compose it. An experiment was once made outside the jurisdiction of this tribunal only a generation ago, and a great lesson learned.

That there may be grave peril in a situation which gives free scope to the generous impulses of a strong nation cannot reasonably be denied. Impulse, even when directed to a noble purpose, is often the enemy of right reason, and defeats its ends. It is in the nature of things that a story of wrong, persistent and unredressed, should rouse our people to wrath and tempt them to chivalrous, even if imprudent action. A great republic, unembarrassed by the barnacle growth

of ages, lightly equipped, because free from oppressive debt, earnest for liberty, and hating oppression, is prone to generous folly that makes the Old World stand aghast. The cries of our neighbors are quickly caught up by ready ears. Differences of race are soon forgotten when our sympathies are plausibly invoked. We are, perhaps, too ready to love our neighbor as ourselves. A noble maxim in private life and one which no doubt should find an honorable place in the international horn-book. For international law is based on, made up of, and permeated with, moral law. It is nothing, if not moral.

The eminent Chief Justice of England says that "the ultimate aim in the actions of men and of communities ought to conform to the divine precept—'Do unto others as you would that others should do unto you'"; an exalted, but, perhaps, not wholly safe guide in the intricate labyrinth of international relations. While such a precept, if followed by individuals, would raise society to a plane that it has never yet attained; while it may be followed by all who understand it to be the essence of the precept of charity, the application of the Golden Rule in the larger matters of the world might be destructive of all pretence of international law. Unrestrained emotion, however generous, might and would be indulged in at the expense of nearly every rule that jurists have taught, from Grotius and Puffendorf to Story and Wheaton. Law,—every law,—means restraint and involves self-denial. When these States were colonies in rebellion, they longed for, sought, and obtained foreign intervention. Does it follow that the mature nation shall do to others what it then desired others to do for it? The point of view of contending nations is naturally

different. If to-day a foreign power seeks by force to retain in subjection its reluctant colonies, how shall the Golden Rule be applied? Which of the contestants shall receive the benefit of its application in the form, not only of sympathy but of moral and physical support? We have been at one time the rebellious colonies, at another the power that undertook to reduce its rebels to submission. In the one case the Golden Rule meant, "Help those who struggle for freedom"; in another, "Hands off!" Non-intervention in the affairs of other communities is one of the few principles that are generally recognized as essential to the peace of nations, and yet it is hard to keep the blood of a free and magnanimous people from tingling and rushing to fever heat when the cries of a despairing neighbor rise in protest against oppression. Yet our Washington, with prophetic vision of the dangers lying in wait for his countrymen, warned them against listening to the voice of natural and brotherly sympathy. What, then, becomes of the Golden Rule, if it is circumscribed by expediency, fettered by law, and condemned in practice by "those rules to which nations have agreed to conform in their conduct toward one another"?

This apparently pessimistic view of the applicability of moral precepts to the regulation of international affairs only serves to prove that the element of law enters but inadequately into the system that we are considering. Where the municipal law is concerned no such confusion and difficulty arise, for the statutes interfere to prevent the over-zealous moralist from indulging, to the detriment of others, in his desire to promote the welfare of his neighbors. He may give his fortune and his time or his life to the improvement

of his brethren, but even philanthropy has its legal limitations. The best, the most exalted motives will not give immunity to the violation of a statute. The wings of charity are often clipped by the shears of cold-blooded legislation. Wrongs often go unredressed because a Christian Quixote may not do to his noisy or peace-disturbing neighbor what his own construction of the Golden Rule would suggest as most expedient.

It may appear from what precedes that the sanctions of international law are at least imperfect and insufficient, if they exist at all. It may be accepted as a fact, not encouraging, perhaps, to the student, that the system is only an approach to a system, the law only an approximation to a law, the rules no more than abstract precepts which may be violated with impunity, because there is no tribunal vested with the power to restrain or to punish the violator. But imperfect as the device may be, it deserves careful consideration. Its aim is high and its purpose beneficent. It is of some avail *parcere subjectis*, though it has never yet been efficient *debellare superbos*. It is in effect an attempt of Christian civilization to propose humane rules for the international regulation of the affairs of the several nations. It has not yet taught forbearance to the mighty, nor given assurance of justice to the weak, but it has striven to do both, and in some measure it has succeeded. It has not abrogated war, but it has taught the value of charity, even when the laws were silent. It has not abolished human slavery, but it has brought nations to a common understanding that the traffic in human beings should be, in the common interest of their self-respect, crippled if not destroyed. It has founded no tribunal, but has developed a monitor—

public opinion—which may remonstrate and denounce in a voice that goes around the world. And finally, when clouds of dissension arise upon the horizon, it teaches, by its very misnomer, that there is a class of men who may be trusted to solve weighty problems more safely and less expensively than those who rely upon force to persuade, and gunpowder to convince. The lawyer—or as he is finely called when his client is a nation, the jurist, at the opportune moment, steps upon the scene, and the halting march of progress is resumed, the wheels of commerce continue to revolve, protocols take the place of declarations, pleadings of bulletins, and legal opinions of proclamations. No ghastly list of dead and wounded sickens the homes of the contestants. When the fight is over, no healing processes of time and taxation are needed to repair the waste, for reason has had the last word and has reached a result quite as certain to be just as though the debate had been fought out at Waterloo, Gettysburg, or Sedan. If this be one of the fruits of this so-called science, it is indeed a blessed science that deserves to live forever.



HISTORY AND BIOGRAPHY



V

CHRISTOPHER COLUMBUS ¹

THE early life of Columbus offers a most alluring field to the historian of a speculative and imaginative turn of mind. The story abounds in doubts and rests upon a nice calculation of probabilities. The writer must make a free use of the potential mode, and may only indulge in positive statements with misgivings as to his own accuracy. While Homer has been claimed by seven different cities, all of them anxious to secure the fame of having given him birth, Columbus may boast even more. Genoa seems to be the first in the race; to make her claims sure a noble marquis, a few years ago, pointed out a venerable structure in which he asserts that the great discoverer was born. As nothing can be plainer than the fact that the marquis speaks only upon information and belief, no imputation upon his veracity is cast by those who name other claimants as entitled to the much coveted honor. Unless the Genoese champion may emulate Pythagoras, who assured his hearers that he had been present, in the flesh, centuries before, at the siege of Troy, in the person of Euphorbus, and proved the assertion by pointing out the shield

¹ An address before the Catholic Club and the United States Catholic Historical Society, Carnegie Hall, October 11, 1892.

which he then wore, we require other evidence to sustain the marquis's assertion. If, however, Columbus was not born in Genoa, who knows whether his eyes did not first open to the light in Corsica? At least a learned abbé so states, and the town of Calvi has given earnest of its convictions by erecting a monument to assure posterity of the fact and to place it beyond the shadowy regions of historical controversy.

If we may without discourtesy venture to dispute the abbé and the monument and turn our back on Corsica, we shall find Cucaro, Cugureo, Piacenza, and other towns, rapidly increasing in number as time rolls on, to vindicate their claims. It is not here necessary, fortunately for us, to settle the dispute. The part of wisdom is rather to follow the example of the Chicago Fair, and to photograph all the rival sites, with generous impartiality and unreserved confidence in the judgment of the citizen who shall undertake to decide the question for himself. It is enough to say here that Columbus, more fortunate than Homer, was certainly born and lived and died—so far as such men as Homer and Columbus ever die.

So, too, it may be said by hasty and reckless writers that Columbus was of Italian descent, but even here doubt throttles assertion and bids it pause. Is it quite sure that Columbus did not owe part, at least, of his daring and courage and tenacity to the French blood, which, it is stated by some authorities, flowed in his veins? Not a mean and plebeian blood, but a bluish and gentle fluid, that had run in bright channels through the bodies of gallant men and fair women. An admiral in the French navy would, according to some, be responsible in the far past for the propensity, invincible and enduring in Columbus, to

scour the seas. A clear case of atavism, even if the French ancestor was a bold pirate as well as a noble admiral. Again it is our good fortune to-night that we need not decide the question. But I deem it my duty to warn you that no inference unfavorable to this theory is to be drawn from the fact that French writers lay no stress upon the possible circumstance that Columbus may have been warmed and invigorated by the same blood as themselves. They exhibit a curious apathy and indifference in this respect. Do they not pass without notice and without a proper exhibition of exultation the well-ascertained truth that Washington himself was one of their kinsmen? Is it not probable that his strong, cold nature was occasionally warmed up to its boiling point by an ebullition wholly French? If the great, strange oaths that he swore at Lee on the plains of Monmouth had been accurately preserved, they might throw some light upon the subject. What shall we say of a nation that allows Scotland to capture St. Patrick and claim him as her own, without regard to the truth of history or the probable preferences of the good saint himself? It is idle to pursue this digression; it was only intended to explain why the possible right of Columbus to claim a French ancestry was not diminished by the negligence of French writers of history to uphold it.

Wherever born and from whatever parent root he sprang, Columbus was, for the time, a well educated man. I am tempted to say a well educated gentleman, and upon the whole conclude that this term may be safely adopted, although it is a matter of doubt whether his parents were of noble rank or simply carders of wool. This subject is not one of great importance, however, if we adopt the suggestion made

by an ingenious writer that wool-carding was a very reputable business, in which persons of birth and education not infrequently engaged, so that the two theories may be happily reconciled by the conclusion that neither excludes the truth of the other.

To decide where Columbus received his early education is comparatively easy. There are but two cities seriously claiming the title of pedagogue to the future discoverer. These are Genoa and Padua. The strongest argument thus far advanced in favor of the latter is to the effect that Genoa being imperfectly equipped with educational appliances, he *must* have imbibed his learning at Paduan fountains. This is very much as though one were to say, of any learned native of Brooklyn or Philadelphia whose Alma Mater was unknown, that he must have studied at Columbia College.

Having thus settled that Columbus was born in Italy or Corsica, that he was a descendant of French or Italian ancestors, that he was born of noble though wool-carding parents, and educated at Genoa or Padua, and without attempting to fix the date of his birth as utterly beyond our ability to establish, the remaining work before the student of the great man's life is comparatively easy. The doubts and difficulties that beset us are no greater than those that arise when we deal with others of the world's great children. We may trace his struggles and trials, sympathize with him in the bitterness of his disappointments, marvel at the unflinching courage and tenacity of his purpose, and follow him, almost day by day, from the moment when he stepped on his puny caravel to the hour of his death.

It has been the fashion of many admirers of Colum-

bus to look for the elements of a special inspiration in his life, labors, and successes. It has been assumed by them that his fame would be magnified if he were shown to be the special object of a divine selection for the accomplishment of great ends. That he was prompted, guided, directed, and protected by divine providence, and that without this aid he would have failed in the accomplishment of his purpose, is merely to state a proposition in which all believers in the ever-present influence of a divine will may acquiesce. But there is nothing to justify the contention that Columbus, like Joan of Arc, was called by an irresistible command to perform a task which he was not in every way, by nature and education, fitted to perform. The little Maid of Orleans, who left her peaceful home to save her country, with no knowledge of war, no skill in arms, no taste for shedding human blood, may well stand before posterity and challenge universal homage and tender admiration for deeds that exhibit the luminous traces of special inspiration. It is quite as easy to believe her own pathetic story as to account in any other way for the development of the plain, modest, pious, peasant girl into a skilful, brave, and successful warrior. The two cases, of Joan and of Columbus, may serve as illustrations of the dividing line between that impetus which derives its sole force and origin from an unseen and providential cause and the natural, logical, and expected result of genius and courage, working under God's providence to a definite and well-conceived end. Columbus had received the gift of genius, which is of itself a sort of inspiration to accomplish great things. Genius is not the result nor creation of education, nor the fruit of toil, nor the gift of ancestry; it is a spark that is

blown into a flame, without the consciousness of its possessor, and which then lights up the world, for good or for evil. Alexander, Hannibal, Cæsar, Mahomet, and Napoleon stand apart from the rest of the world as men thus gifted. Many would add Columbus to the list, although his title to be ranked in such company is not universally conceded.

We are naturally disposed, after these four hundred years, looking through the dim veil of commingled history and romance, to treat the discovery of America by Columbus as a marvellous and unequalled event, which only a rare combination of circumstances could produce. It is assumed that there was little in the past history of the world, or in the knowledge then held by learned men, to justify the belief that the extremities of the world had not been reached. But such delusions cannot withstand a moment's scrutiny. The marvel is, not that the discovery *was* made, but that it had not been made long before. It was as inevitable that it should be effected at an early date as the discovery of printing was sure to follow the invention of paper. To use a common but expressive form of speech—it was in the air. Proof abounded that there was an undiscovered land far to the west and that a continent, supposed to be the continent of Asia, might be directly reached by sailing in a westerly direction from Europe over the Atlantic. Evidence sufficient to convict the strange land of being a reality had been repeatedly furnished, in almost conclusive form. Navigators driven by storm beyond the Azores had found curiously carved woods, manifestly of some other than European origin; a large canoe, capacious enough to hold twenty rowers, had been picked up at sea, and also strange trees of a kind unknown to

Europeans; more striking than all, perhaps, the bodies of men, of a dark color, had been thrown up by the sea and had shown that somewhere in the west a race of human beings would be found, differing in appearance from any then known, whether of European, Asiatic, or African origin. Marco Polo, the great traveller, had returned from his explorations and told strange tales of the countries that he had visited, Tartary, India, China; these were supposed to extend as far as the continent now known as the continent of America.

But neither the physical proofs thus furnished by flood and tide and storm, nor the narratives of travellers, could extirpate the deeply rooted prejudices of men and overcome the invincible ignorance of the great mass of mankind.

Men had eyes to see, but the lessons taught by the bodies of dead men and strange plants and beasts, they could not read. They had ears, but they would not listen to the tales of travellers, preferring, as sluggish indolence always does, to call them lies and thus end the debate.

We must remember, however, that the world was not plunged in absolute ignorance as to the conformation of the earth. The idea that its form was spherical was old and accepted by learned men. Ptolemy and the geographers of Arabia had long taught that the earth was in the form of a globe and might be circumnavigated. The lodestone and astrolabe had been invented and had made navigation comparatively easy and safe.

Nor was this all. The fact must have been known to many that there was a new land to the west of Greenland. The hardy Norsemen had put their foot

upon it five hundred years before Columbus turned his back on Palos. They had made repeated voyages between Greenland and Iceland. Even were we not assured by positive proof that such was the fact, we must have drawn the conclusion from irresistible evidence. The dauntless sailors who left Norway to settle in Iceland, and from Iceland reached Greenland, were not the men to permit the narrow seas to separate them from the continent that was within easy reach. Even had they been willing to leave the neighboring ocean unexplored, some beneficent storm from the northeast must have forced them into a reluctant knowledge of their neighbors. The distance between Iceland and Greenland is 750 miles; America is but 250 miles from Greenland. The old Vikings, who were never so thoroughly at home as when they trod the deck of a stout ship in a storm, are not open to the reproach of having feared to test the mysteries of these unknown waters. The record of northern voyages is too well known to leave a doubt as to their having been made and having resulted in the discovery of America. In the year 986, Bjorne Herjwissen saw the land which we now call New England. It was originally called Vinland on account of the grapes that were discovered there and said to produce good wine. So satisfactory and complete was the evidence of the existence of this remote land, that Pope Paschal II., as early as the year 1112, appointed Eric Upsi Bishop of Iceland, Greenland, and Vinland, and the bishop, it is said, actually visited Vinland in person during the year 1121. While we have no accurate data as to the spiritual condition of the new diocese, we know that it was extensive enough in point of area. It certainly is interesting to read that nearly four hundred years before Columbus

and his people undertook to evangelize the peaceful inhabitants of the west, the Church was solicitous enough to send out one of her servants to teach the natives the truths of the gospel, and to bring them within the fold. Unfortunately, the great plague that well-nigh depopulated Norway put an end for many years to schemes of distant philanthropy and foreign adventure.

Nor was Vinland the only section of America on which the European had set his foot. "Great Ireland" antedates even these early attempts and had long been discovered by men from Ireland when Are Marsen visited that region in 983. They occupied the country south of the Chesapeake Bay, including North and South Carolina, Georgia, and East Florida. When, in 999, Gudlief Gudlangson and his sailors were driven by storms to America, they landed in an unknown region where they were at once met by several hundred natives whose language was apparently Irish. The methods of these natives were not as courteous and civilized as those of their modern descendants, for they at once seized the foreigners and bound them, thus forcibly signifying their doctrine of home rule and their determination to retain the country for themselves as the rightful owners thereof. They did not harm the unwilling invaders of their territory, however, but allowed them to depart unmolested, after signifying with marked emphasis that it would not be safe to remain—a piece of wise conduct that might have been emulated with advantage by the natives who afterwards received some of the followers of Columbus with open arms.

From the historical fragments left us it is almost certain that Columbus knew of the existence of a

continent in the far west. He was by profession a geographer and earned his living by drawing and selling charts that were highly esteemed for their accuracy. The study of the physical world was his favorite pursuit. It is to be presumed that he knew of these subjects all that the learned men of his day had acquired; with these elements of fact to work upon, his ingenious mind could reach but one conclusion. A strong additional circumstance lends weight to these considerations. There is no doubt that in or about 1477 Columbus visited Iceland, which has been termed the hinge upon which the discovery of America turned. There he must necessarily have learned something of the traditions which preserved the old Norse discoveries from oblivion. Can it be supposed that he, filled as he was with the ambition of making his way to India through undiscovered seas, never heard of Vinland nor of the bishop appointed by Paschal? Then, too, Adam von Bremen's account had been published in 1073, if we may speak of publication before the invention of printing, and perpetuated the brave deeds of the Norse navigators. No wonder then that Columbus spoke and acted as though he *knew* rather than conjectured, calculated, or imagined. "When he had formed his theory," says Washington Irving, "it became fixed in his mind with singular firmness. He never spoke in doubt or hesitation, but with as much certainty as if his eyes had already seen the promised land." A very probable statement and a very natural condition of mind if he had read of the Norse discoveries, the Irish settlement, the papal appointment of a bishop to Vinland, and was familiar with the household traditions of the Norsemen.

We may, then, assume the truth of the proposition that the condition of the public mind was such that an attempt to penetrate the mystery of the western seas was inevitable, and the further proposition that of all men fitted for the task none was more competent than Columbus. That he should have become possessed of this one fixed, absorbing thought was not strange. He was ambitious of honors, title, wealth, power, and fame; all these lay on the route to India, the land of Solomon's Mines, the Ophir of boundless promise, the undiscovered country which held in its bosom treasures vast enough to challenge the wildest imagination, to realize the wildest dream.

Why the effort was so long delayed, why Columbus himself, eloquent, learned, enthusiastic as he was, wore away twenty long years in the vain attempt to enlist royal sympathy in favor of his scheme, seems difficult to account for, but some reasons for the strange lethargy may be advanced.

The natural fear of the unknown has always fed upon a superstitious fear of Providence. The Roman poet strongly and beautifully expressed it when he condemned the restless spirit of men who leaped over the natural boundaries created by Jove—who dared to sail over the waters which the deity had interposed as a barrier between dissociated continents and who, by their impious disregard of divine laws, challenged Jove's wrath and never permitted his thunders to intermit their destructive bolts. A feeling somewhat akin to this still survived and was only beginning to yield before a more general diffusion of enlightened views.

The proposed attempt to brave the horrors of the unknown ocean was looked upon by many as impious

and dangerous, at one and the same time. The anger of the sea was less to be dreaded than the wrath of its Master. Men had been warned by divine lips that they should not tempt the Lord their God; what was this bold venture into the very jaws of death but a challenge and a defiance to the Almighty? Scientific reasons were often brushed aside even by learned men. Some of these, while admitting the rotundity of the earth, still urged the rashness of the attempt. Grant that the world was round, grant that a hardy navigator might sail far into unknown regions, the moment would come when, the antipodes being reached, the doomed ship must drop from the sea that had thus far sustained her weight and, plunging helplessly into infinite space, meet a fate as dreadful as it was deserved. And if, by some strange and hitherto unknown physical law, the fated bark still clung to the slippery waters, how could it be expected that, in defiance of all principles and all rules of physics, she would climb back, upon the liquid and treacherous hill, to the point whence she had started? Thus, a little knowledge proved a dangerous thing; it gave the objector the prestige of scientific acquirements in dealing with the matter, and he was only the more dangerous because he was somewhat less ignorant than his followers.

The arguments from Scripture were especially dangerous, and were perhaps the most difficult to answer. They came from pious and good men, who placed their own narrow interpretation upon isolated passages, and gave them a meaning which condemned such attempts as blasphemous. The prophets and the fathers of the Church were freely quoted as being conclusively opposed to the plans of Columbus. Lactantius was cited as saying that it was the height of absurdity to

pretend that there was such a part of the world as the antipodes were supposed to represent, where men walked about with their heels in the air and their heads down; where human beings had their feet directly opposite ours; where everything was reversed, the trees growing with their roots in the air and the branches in the ground. No one could deny that such propositions were very absurd, and in fact incredible, if faith in the antipodes obliged belief in such an upheaval and reversal of physical laws. Then, too, it had been said that all men came from Adam, which was surely not the case if there was another race of men in that fabulous country. Finally, some learned doctors, applying a figurative test to the exigencies of the discussion, cited the passage of the Scriptures wherein it is stated that the Lord stretched the skies over the land like unto a tent, which was clearly impossible if the earth was round. At least so they argued, and with no small success.

Against these and other such adversaries, Columbus waged his battle. He was himself a pious man, deeply imbued with the doctrines of the Church. His reply was, therefore, such as a devout Christian would venture to offer; it was not the sneer of a scoffer, nor the challenge of an infidel. He sought to reconcile the truths of Scripture with those which he gathered from science and experience, and to deal gently and patiently with ignorance and prejudice, whatever their origin and whatever the garb in which they were clothed. He was eloquent, enthusiastic, learned, and skilful in debate; but with all these qualities he might have failed in his purpose but for the timely aid of churchmen whose orthodoxy was beyond dispute. Diego de Deza, in particular, a Dominican, subsequently

Bishop of Toledo, gave him his warm support, and lent the color of religious regularity to the advocacy of the new cause. Other religious men joined him to overcome the opposition that had so bitterly assailed Columbus and his strange theories; but even with this valuable aid, it was a long and weary contest, that wore out the great adventurer's best days. Portugal, Genoa, Spain,—were, each in turn, appealed to. The confident hope of a result that would startle the world and enrich the promoters of his cause beyond their dreams was urged in vain to incredulous ears. Inconceivable as was this stubborn resistance to his appeals, it baffled him for years, and he would probably have ended his days without sight of the promised land but for the friend whom a kind Providence placed upon his path, when hope was well-nigh dead. The prior of the humble convent of La Rabida received the weary traveller when his fortunes were at their lowest ebb; his charity revived the wanderer when with his young son he turned his back upon great visions to seek for food and shelter. These, with gentle sympathy, the good prior gave from his heart to the baffled and dispirited chart-maker. He filled him with new courage, started him afresh upon his journey, put money in his purse, furnished him with letters of commendation to the queen, with fitting garments for one who aspired to enter and ask the favor of a court; and, more than all, with the assurance that, be the treatment of that court what it might, the door of La Rabida was ever open and ready to receive its one-time guest with unfailing love. Wherever the story of Columbus is told, the name of Juan Perez should be named with reverence. Amid all the vanities and petty ambitions of the time and

occasion, he stands out almost alone as the embodiment of all that is best in human nature. No selfish motives tainted his action. As has been well and truly said, the prior gave Columbus his heart, and, strange to tell, he never took it back.

Thanks to Juan Perez, Columbus had audience of the King and Queen, an admirably assorted couple for the functions in which they were engaged. Ferdinand contributed the caution, Isabella the liberal qualities necessary to govern the country over which they ruled. Isabella was ready to pawn her jewels for a worthy cause, if funds could not otherwise be secured. Ferdinand would be sure to enquire whether the venture was likely to pay expenses and a profit. Isabella alone would have wrecked the treasury, with a glorious disregard of financial results. Ferdinand would have conducted the royal business by strict rules of arithmetic, unrelieved by generous diversions or sentimental deflections, even if these were calculated to secure popular applause and sympathy. He would never go to war for an idea, unless the expulsion of the Moors be deemed such a one; but there was, even in that attempt to drive out the unbeliever, a practical side. In their dealing with Columbus, the dual nature of the royal association was manifested. Isabella was anxious to plunge into the adventure, without reference to the terms proposed by Columbus; Ferdinand declined to invest his money except upon such conditions as would make the risk a reasonable one. It must be admitted here that the settlement of the bargain, for such it was, involved no deception or undue advantage on either side. Columbus was quite equal to the occasion, and quite a match for his kindly patron. He was bent on carrying the faith to

the infidel, on bringing unnumbered heathen wretches within the pale of the Church; he was eager to push the glory and empire of Spain to the remotest ends of the earth. This was the argument *ad hominem*, or rather *ad fœminam*, with which he mastered the enthusiastic and pious temperament of Isabella; but Ferdinand was made of harder and more practical material. No doubt his feelings toward his unknown brethren of the remote west were kind enough, but then these people were far away and mysterious, and it was not possible to say in advance how lovable or valuable they would turn out to be. Then the greatness of Spain and her glory, though dear to the King of Aragon, were expensive luxuries to sustain and required a surplus in the treasury; glory and a deficit were incompatible and inconsistent adjuncts to his crown. But when Columbus told him of the treasures that he might secure while he saved the souls of the heathen, and put his finger, as it were, on Solomon's mines while he extended the Castilian Empire, Ferdinand's desire for profit was quickened into something like sympathy. The parties of the first part and of the second part being agreed as to the expediency of entering into the operation, the party of the third part stated his terms. They indicated in clear language the determination of the explorer to realize a full share of the financial benefits likely to accrue from the union of the capital to be contributed by his associates and the labor to be contributed by himself. He did not betray any undue modesty in the statement of his expectations. He required the title and privileges of an admiral, the powers and prerogatives of a viceroy, and ten per cent. in perpetuity of the income to be derived from the new posses-

sions, this income to be paid to him and his heirs forever.

These conditions startled the king, who refused to accept them. The titles, no doubt, were well enough, and he might consent to ennoble the successful adventurer and his remotest posterity with lavish profusion, provided the commission on the possible revenues were reduced to a reasonable percentage. But ten per cent. forever! The royal conscience rebelled at such demands; they far exceeded the limits which any subject had a right to touch in negotiating with his sovereign. The king was firm and Columbus obstinate. Isabella was indifferent to the business aspect of the affair. Her motives were of a higher order, and to carry them out she was willing to subscribe to any terms that her intended associate saw fit to exact. Her consort was strong enough for the time being, however, to carry the day, and Columbus, firmly rooted in the commercial instincts of his Genoese ancestors—if they were Genoese—once more turned his back on the court and once more sought the society and counsel of his old friend and helper, the monk of La Rabida.

But once more, as in the past, the ready hand and heart of Juan Perez did their work, and Columbus, with renewed courage and hope, started to interest the French monarch in his plans. Would the latter have been more generous than his brother king? Would he have added the percentage in cash to the payment in honors and heritable titles? That question cannot be solved. The influence of the good queen prevailed, the king relented and signified his assent to the demands which he had thus far rejected. What influenced him to this change of spirit we may only

conjecture. Perhaps it was a natural inclination to please his gentle wife; perhaps the fear that in striving to save ten per cent. he might lose ninety; perhaps he knew (and he remembered in after days) that agreements between king and subject are always open to royal revision and may be read in the right spirit, that is, as the royal pleasure may suggest. Like the lion in the fable, the share of the monarch is what he chooses to claim: "I take this," says the lion, "*quia nominor Leo*" (because my name is Lion)—an unanswerable argument from time immemorial.

Even at this stage of the proceedings the current did not flow smoothly. The money, although promised, shrank timidly from the risks which it was to run. Isabella had threatened to pawn her jewels, but this sacrifice was not exacted from her. The brothers Pinzon had become interested through Juan Perez in the proposed trip to an unknown world, and, thanks to them, the paltry sum was found which made the voyage practicable. By virtue of a slight modification in the agreement, Columbus was to furnish one eighth of the funds, but this he was able to do through his new friends. The contract, when finally reduced to writing, was executed on the 17th April, 1492; it was really the contract of Isabella of Castile, though signed by both monarchs; *her* subjects alone were permitted to settle in the new country so long as she lived.

Columbus was not compelled to wait until success had placed the seal on his work to receive some of his reward. His name was changed from Colombo to Colon; he was graciously permitted to use the prefix *Don*, and his son was allowed to serve as a page to the Queen, a privilege which gave him access to the society of young people whose blood was blue. Thus,

to some extent, at least, was he paid in advance. Ferdinand was a munificent king in the distribution of all those rewards the giving of which in no wise diminished the supply at his command.

When Columbus went back to the small monastery and to the faithful friend who loved him still, the good prior rejoiced as though the victory were his and he were to receive large profits and brilliant titles. He lent a willing hand to the preparations for the great voyage; he helped to smooth over the countless impediments that still grew, like rank weeds, in the discoverer's path. Three poor caravels had been found, the *Santa Maria*, the *Niña*, and the *Pinta*; they had been made, thanks to the Pinzon advances, fairly seaworthy, but when the time came to man them, the old terror and superstition threatened destruction to everything. Men would not embark on the ill-fated ships, rigged with curses dark as those that brought young Lycidas to grief. Sailors were plenty enough and daring enough, but they all wanted to return from any voyage on which they started, and how were they ever to get back to their own world after they had dropped into infinite ether, or sailed rapidly down the liquid hill? This difficulty, too, was vanquished. The scum of the seafaring population of the country was forced into the ships, and with a motley crew of bankrupts fleeing from their creditors, of criminals fleeing from justice, and of adventurers eager to feast their eyes upon and to fill their hands with the promised gold, the three ships sailed.

They left Palos on Friday, the third day of August, 1492, the good prior watching from the shore to the last, and praying for the friend he had served so well. Then commenced the weary journey, with its dangers

and its doubts,—a sullen crew, animated by sordid motives, and ever ready to visit disappointment on its master, mutiny in a chronic state, and a strong, brave chief as well fitted to cope with the rebellion of men as he was able to meet the hostile fury of the waves. Of him, indeed, it might be said that his heart was cased in oak and triple brass, as the poet describes the fearless man who first entrusted his life, in a frail bark, to the cruel sea. From the first day to the last he was undaunted. His assurance of ultimate success was such that the belief grows upon us, when we contemplate it, that he *knew* that the land lay before him, and approximately calculated the distance that he would have to sail. That he was wrong, in one respect, no one doubts,—he expected to find the continent of Asia, and found America blocking his way. But his confidence can only be explained on the theory that he had mastered the facts and was serene in consequence of the assurance they gave. As to his discontented and mutinous followers, he dealt with them as men of his stamp alone can deal. He awed them by his majestic bearing; he encouraged them by his unfailing confidence; he drew upon his vivid imagination to depict in glowing words the incalculable wealth of the new countries they were about to reach. He used the only argument potential with them. They wanted gold, gold in abundance, without stint, without labor, without hindrance; he promised that they should have it to their hearts' desire. With these promises and some deception as to the course that they were daily running, he succeeded in keeping them from open violence, until they entered upon the pleasant waters of the south and met unmistakable evidences that they were nearing land. Carved woods,

branches with fresh flowers, the limb of a tree, which bore upon its fragile structure a bird's nest, with the mother bird guarding her young covey,—these and other signs left no doubt in reasonable minds that the land was at hand. The balmy sweetness of the air was like their own Andalusian springtime; they only lacked the nightingale, said Columbus. But a new panic seized upon the men as confidence was beginning to overcome unreasoning fear. The wind died out, and days passed with nothing to relieve the anxious monotony that suggested danger in a new form. What if this were a region of endless calm, and they were fated to die one by one in their motionless ships, the victim of one man's folly and reckless ambition? He, at least, was a scapegoat, and might be offered up as a sacrifice or be punished for his crime. But he waited and compelled their patience until the sluggish winds once more filled their sails, and once more the men forgot to compass their leader's death, in the hope that they would reach land and fortune together.

Who first sighted that land is yet a question. Columbus, whether he felt himself unable farther to resist the threats and importunities of his crew, or because he had calculated to his own satisfaction that he was about to reach his goal, solemnly promised that he would turn back and sail homeward if land were not seen within three days. The mutineers consented to this delay, and their murmurs were quieted for awhile. On the second day the signs were so favorable that the seditious sailors fell upon their knees; they besought their leader for pardon, and sang hymns of praise to the kindness of the Creator who had brought them so near the end of their labors and dangers. A reward had been promised to the man who would first sight

the land. As Columbus, sleepless and vigilant, was pacing the deck of the *Santa Maria*, he saw, or thought he saw, a light; but previous disappointments had made him wary. He called the attention of two of his fellow-watchers to the light that rose and fell; one of them saw it, or thought he saw it, but, fearing a new disappointment, they all remained silent. In the early morning, however, the *Pinta's* cannon announced, and truly, that land was in view; this was the concerted signal by which the joyful news might be loudly proclaimed to all.

And now we have the culminating point of the great explorer's life. His triumph was without alloy. It was even greater in appearance than in fact. He believed that he had at last found the land of promise and of untold wealth, and as he left his ship and stepped ashore, clad in purple and bearing the insignia of his newly won honors, he might well exult in the fulfilment of his prophecies and the realization of his dreams. He was now entitled, under his contract, to the rewards which he coveted; he might now bring the simple and harmless men, women, and children who met him on the shore within the fold of the Church. No misgivings entered his mind. The island on which he first set his foot must be at the very door of the Indies, and with becoming reverence he baptized it in the Saviour's name, San Salvador.

Then commenced a series of adventures in dream-land—by daylight; at least such it must have seemed to the travellers. The loveliness of the skies, the gentleness of the inhabitants, the songs of the birds, the pure and balmy atmosphere,—above all, the confident hope of forthcoming gold,—were, indeed, such as to fill their hearts with joy, and almost to justify

the belief that the earthly paradise had been found. If that hope could only be realized, their happiness would be complete; for we cannot close our eyes to the fact that whatever Columbus personally may have felt, the gentle heathen and his salvation were the accessory and not the principal subjects of the general solicitude. The feverish anxiety to secure the yellow metal of which the trinkets were made that adorned the persons of the inhabitants, the numerous inquiries as to the source whence that metal had been procured, the interest exhibited for its acquisition, could not but impress the astonished native, who believed that gold was the god of his new visitors. Columbus, himself, allowed his great and noble purposes to be deferred to satisfying the greed of his crew, and with earnest appeals to the Almighty, he prayed for instructions that might lead him to fortune. "Our Lord, in whose hands are all things, be my help!" he cries, "Our Lord in His mercy direct me where I may find the gold mine." They wandered from island to island—kidnapping a dozen or two of the natives who had never been taught resistance, greed, or cruelty—in quest of the undiscovered treasures. Every point that he touched was, according to Columbus' narrative, more beautiful than all the rest; in fact, he indulges in such wild and extravagant expressions of delight, that a suspicion is raised (as Prescott has it) that a temporary alienation of mind is shown in the letters which he wrote from Jamaica to the sovereigns. "Sober narrative and sound reasoning were strangely blended with crazy dreams and doleful lamentations. Vagaries like these," adds Prescott, "which came occasionally like clouds over his soul to shut out the light of reason, cannot fail to fill the mind of the reader, as they

doubtless did those of the sovereigns, with mingled sentiments of wonder and compassion." Our lamented friend Dr. Gilmary Shea has pointed out, in his work on Columbus, that "he seems to have succeeded in attaching to himself but few men who adhered loyally to his cause. Those under him were constantly rebellious and mutinous; those over him found him impracticable. To array all these as enemies, inspired by a Satanic hostility to a great servant of God, is to ask too much of our belief."

It would extend this paper far beyond any reasonable limit if I sought to enter into anything more than a rapid and cursory narrative of the four voyages that Columbus made to America and thence back to Spain.

The first was the only one which gave him unmixed glory and happiness. He then touched the pinnacle of his fame, and the descent after that to ruin and disgrace was as distressing as it was rapid. Up to the moment of his death he believed that when he set his foot on the soil of Cuba he stood on the continent of Asia. With that delusion firm and fixed, he died. At least we may assume that it was really entertained by him, although the dramatic conditions that accompanied his first declaration of the fact might shake our belief in his good faith. One of his first acts on taking possession of the island was to impose an oath upon his men, making them declare that they had reached the coast of Asia. Such an exaction seems hardly consistent with entire sanity.

Perhaps nothing can give a better idea of the effect produced by these strange sights upon so strong an intellect as that of Columbus than the fact that he was quite assured that he had seen mermaids in these southern waters. The prosaic explanation given is

that they were probably sea-calves, and that their heads, when slightly lifted above the water, bore a general resemblance to the human face. The truth is that everything around him was new and mysterious; there was no difficulty in believing that such romantic persons lived in the sea.

Columbus received a right royal reception on his return. Both sovereigns rose to receive him standing; and when he stooped to kiss their hands, they gently and graciously lifted him and bade him sit. Then he told his story, and from time to time produced the evidences of his veracity. He showed the Indians that he had captured, the birds, the skins, the barbaric ornaments, and the samples of gold which he had brought with him, and when the *Te Deum* had been chanted, he was treated as a royal guest and assigned lodgings under the royal roof. This period of a few weeks was really the only time of unalloyed happiness that Columbus ever enjoyed. He was not averse to public scenes nor disposed to shrink from the plaudits of an admiring multitude; when he passed among the excited throngs his face beamed with content. There was no trouble then to find volunteers for another transatlantic voyage; the specimens of hard and yellow gold were more eloquent than any discourse that had ever been spoken by Columbus. The curb became more necessary than the spur when the new expedition was fitted out. Capital had lost its shrinking and sensitive modesty, in view of assured success. All the ships in the ports of Andalusia were placed at Columbus's disposal and he was authorized to compel service from those whom he chose to carry with him on his expedition. Military stores were abundantly provided; able and intelligent supervisors aided

him; among these we find the name of Americus Vesputius.

The conversion of the heathen to Christianity was formally declared to be one of the most important objects of the enterprise. The King and Queen showed their good faith by designating twelve learned priests to accompany the expedition; one of them was the apostolic vicar. Isabella's kind heart had been moved by the accounts of the gentleness and simplicity of the natives to consider them with tender compassion, and to her credit be it said that she strictly enjoined that they should be treated with the utmost kindness. Columbus was ordered to inflict signal punishment on all Spaniards who should be guilty of outrage and injustice towards them.

About fifteen hundred men started upon the second expedition. They carried with them goats, sheep, cows, and domestic fowls. Once more the fleet entered the beautiful regions of the south. Porto Rico and other islands were visited and taken possession of in the name of Spain. The adventurers met the Caribs, who were said by Columbus to be very fierce and given to eating human flesh. Whether it be true that these barbarous people were actually addicted to such revolting practices may well be doubted. Even Mr. Irving, one of the most earnest defenders of Columbus' fame, ventures to question the reliability of these statements. There is but little to support and much to contradict the charge. Hayti was reached and visited for the second time. The natives had heard of Columbus on his first voyage and still entertained a friendly disposition toward him. They came on board the ship without hesitation or fear. The Admiral had left behind him a colony of men on the

former trip, and the fortress that he had built was found and visited; nothing remained except vestiges of ruin to show where it had stood. It had been sacked, burned, and utterly destroyed. The story was soon told, and there is no reason to doubt its substantial truth. While Columbus was present he was able to exercise some restraint upon the fierce passions of his men, but no sooner had his ship disappeared in the distance than the new colonists abandoned themselves to all their brutal instincts. They wandered uncontrolled among the Indians; they robbed them of their gold, of their homes, of everything that was sacred in their domestic relations. If the Indians did suppose, as has been said, that the white men had come down from heaven to visit them, that illusion was soon dispelled in the wild debauch of unmerciful brutality. Even after these four centuries, it is pleasant to draw a veil upon that scene and many others that accompanied the first settlement of America.

We may turn with comfort from this picture and contemplate the good and holy men, members of the same old faith, who were among the first to explore the wilderness of America for the heathen's sake; the noble martyrs who with the staff and the cross, with no hope of reward except the saving of souls, hungry, worn, persecuted, and tortured, walked, alone and unguarded, the wilderness of the lake country, pushed their way to the Father of Rivers, preached the gospel to the savage whom they startled by their audacity, shed no blood but their own, permitted no torture but of their own bodies, pitied all men except themselves, and thought every danger and torment a gain if it promised honor and glory to their God. If we feel at

any time disposed unduly to honor Columbus the Catholic let us evoke the picture of the Jesuit pioneers of the country that he discovered. The testimony of these martyrs will silence History if she exalts him beyond his merits.

The third voyage was another step on the downward plane. The machinations of unrelenting enemies produced their bitter fruit. But for the faithful brothers Bartholomew and Diego, it is not likely that Columbus would have survived to see his home once more. The era of bloodshed had been opened; so-called battles had been fought, and the natives, by thousands upon thousands, were destroyed. Resistance to the steel-clad horsemen was out of the question. We need not wonder that the stranger, with two hundred infantry and twenty horsemen, flanked by twenty bloodhounds as fierce as tigers, was able to meet and conquer one hundred thousand men, nor that the victory of the Spaniards was complete, and that the natives were crushed beyond hope of redemption!

It is pleasing, again, to turn to Isabella, who continued to regard these gentle and unoffending natives as intrusted by God to her peculiar protection. Her disinterested love was not turned into avarice even by a cargo of five hundred slaves that was sent her. An order was issued for their sale, but she countermanded it, and directed that the captives should be returned to their own land. Again she sent a special order that the natives should be treated with the utmost kindness. But great wrongs had been perpetrated before this ineffectual evidence of a loving heart reached its destination.

Meanwhile public sentiment was changing as to the value of the discovery. The ship-loads of gold had not

come in; a few cargoes of slaves were but a small realization of the brilliant expectations that had charmed the imagination of sovereigns and subjects. Men had come back from these transatlantic voyages worn, disabled, broken in health and spirit. Extreme measures were again necessary to secure crews. Convicted malefactors were offered pardon if they would embark for the colonies. The enthusiasm had died out; discouragement and distress had set in; the star of Columbus had grown pale, it was soon to emit its last fitful gleam of intermittent light.

It was on this third voyage that Columbus, for the first time, had a glimpse of the continent which was to be called America. But Sebastian Cabot the year before had already discovered the continent; so had Americus Vesputius. The trip was one of great suffering and disappointment. To the mental distress which well-nigh overwhelmed him were added the tortures of gout and failing sight; still he did not surrender to changing fortune, and with unshaken fortitude he revisited the scenes of his first discoveries and touched from time to time at new islands.

While Columbus was absent on his unpromising, ill-omened voyage the clamors against him swelled into a chorus loud enough to reach the Court. Complaints were many, some of them, perhaps, not without foundation. One of his chief lieutenants rebelled and entered into open conflict with him. In an unguarded moment Columbus requested that an umpire might be sent out to decide the question. This was the signal for his downfall. Ferdinand sent out an umpire in the person of Bobadilla, and the result was that Columbus returned home in chains.

The Queen greeted her old friend with tears, while

he, moved by her compassion and sympathy, fell upon his knees, weeping convulsively. He was old and worn and broken physically: nothing but his lofty spirit had stood the cruel tests to which he had been subjected. The accusations made by Bobadilla were disregarded. Favor and affection were once more lavished upon Columbus, and abundant promises made, which were never kept. If the account of Las Casas be true of the condition of the natives under Bobadilla, the estate of those unfortunate people was made worse by the change of masters.

And now preparations were made for a fourth voyage. Other courts had been gained by the contagion and inoculated with the ambition of great adventures. De Gama had doubled the Cape of Good Hope, and was enriching Portugal with the products of the East. Columbus was to start in quest of a strait, supposed to be somewhere near the Isthmus of Darien and connecting the two great oceans. After many delays, the fleet of four vessels was ready to sail. The largest of the caravels was but seventy tons' burden, and his whole company amounted to but one hundred and fifty men. He turned his back for the last time upon Spain, an old man, exhausted with anxiety and trouble, and racked with physical sickness. Time and adversity had subdued all but the unconquerable will, and once more his faithful brother Bartholomew accompanied him to guard, protect, and defend him.

Columbus now visited Honduras and Costa Rica. He explored bays on the Isthmus of Panama, and found evidence that gold in large quantities was to be had in these regions, but his shattered health paralyzed all physical exertion, while his leaking ships warned him that he should hasten to return. He attempted

to establish a colony on the river Belden, where he intended to leave his brother in command while he returned to Spain for supplies.

The fourth voyage ended in almost total disaster. It was full of disappointment and suffering. Cyclones, insurrections, hunger, and the fear of starvation caused Columbus the deepest anxiety. His ships could not be repaired, nor could he build new ones. The situation at Jamaica became so critical that Columbus was constrained to send one of his followers in a canoe to Hispaniola, a distance of one hundred and twenty miles, to procure relief, for destruction waited upon inaction. They dared not start upon their return with their decayed and broken ships; the dreary weeks ran into months, every day bringing its new weight of woe to the desperate situation. Mutiny was added to the other elements of dissolution. Finally, the Indians could no longer be forced to bring food from a distance and continued to resist until Columbus, working upon their superstitious fears, called them together and predicted a total eclipse of the moon, a sign, he declared, of the Divine wrath, which would soon be directed against the disobedient natives if they did not at once procure supplies. The eclipse came, and the terrified Indians, in trembling submission, helped their persecutors to live.

Finally, after new mutinies and a pitched battle between contending factions of angry Spaniards, Columbus left the New World to return to Spain. He reached his country a weak and tottering old man. His faithful friend the Queen was herself upon her death-bed; no greeting from her, as formerly, warmed the drooping spirits of the Admiral. He found his financial affairs in the utmost confusion. His great expectations of

brilliant rewards had never borne fruit. Poor as he was when he left Spain in August, 1492, he was actually poorer when he returned home to die. The royal contract, which he had been at such pains to secure, gave him no rights that he could enforce. Ferdinand's conscience was no longer quickened, his generosity no longer stimulated, by the presence and kindness of his queen. The pressure upon his treasury was great, and the relief which he had expected from the promises of Columbus had never come. Gold from America he had seen, but only in such quantities as to sharpen desire, not to satisfy greed. He could not read the future, and he did not, therefore, know that royal revenues were to flow into the coffers of his successors, not so much from the gold mines that time would uncover, as from the marvellous tobacco plant that Columbus had found in Cuba. He may have felt that the exactions which he had been coerced to accept when the agreement was made had been imposed upon him by a sort of duress. At all events, he turned a deaf ear to the supplications of his one-time associate, and postponed the manifestation of his gratitude until Columbus was beyond the reach either of his favor or his anger. The discoverer was not suffering alone from cruel disease, but for lack of the actual necessities of life. "I live by borrowing," he said; "little have I profited by twenty years' service, with such toils and perils, since at present I do not own a roof in Spain, and for the most time I have not the wherewithal to pay my bills." This came from the man who had actually sat in the presence of royalty, and who had been decorated with the titles of Don, of Admiral, and of Viceroy! These poor honors were all he had to leave his children. He earnestly besought the King

to appoint his son Diego to the viceroyalty, of which he had been so cruelly deprived. "This," he wrote, "is a matter which concerns my honor. Give or withhold, as may be most for your interest, and I shall be content. I believe the anxiety created by the delay of this affair is the principal cause of my sickness." But in spite of this care for earthly honors, distinction, and titles for himself and those that were to follow him, his thoughts were turned to greater things. Be his weaknesses what they may, an ardent love for the Church had been a conspicuous feature in his life, in his thoughts, and in his acts. The sense of responsibility for all that he had done was before him to the end, lightened and brightened by a confident hope, frequently expressed, that his shortcomings would be mercifully condoned. His mind turned with pathetic affection to the small town of Concepcion, in Hispaniola, which he himself had founded, and there, on the new land, which could never be mentioned except in connection with his own fame, he desired that a chapel should be raised where divine service should be celebrated for his benefit and that of all whom he loved.

Death did not take him unawares or unprovided; he saw its approach without dismay. Indeed, in his straitened and distressed condition, Death was the only friend upon whose face he could look with anything like hope. Life had and could have nothing in store for him but sickness and heavier sorrow. His fortunes were broken, his glory on the wane, his family poor, his body racked by pain. What wonder that he should have longed for the hour of departure? When the message came, he welcomed it with joy. His last words were uttered in Latin: "*In manus tuas,*

Domine, commendo spiritum meum." "Into thy hands, O Lord, I commend my spirit."

Then, being dead and no longer an obstruction in the royal path, or an unpleasant reminder to the royal conscience, royalty once more smiled upon him. A gorgeous funeral atoned, so far as it could, for neglect and injustice. Great honors followed his corpse to the church of Santa Maria de la Antigua. His enemies were silenced and comforted by the reflection that he could no longer interfere with their fortunes. The King was relieved and promptly placed a glorious seal upon the greatest episode of his reign. He was able to balance, by posthumous and inexpensive tributes, the open account pending between himself and his late partner. Isabella gone and Columbus in his grave, the only one of the firm then left was Ferdinand. He could wind up the business to suit himself.

But the remains of Columbus were not permitted to rest in Spain. Once more, but this time in unaccustomed peace, he crossed the Atlantic to find a resting-place. It is said that his body still sleeps in the Cathedral of Havana, on that island which he had solemnly declared to be part of the continent of Asia. The claim of Havana to this honor is disputed, but the evidence seems to be conclusive, and we may state with something like certainty that the great discoverer is now resting in the cathedral of that city.

Columbus, like all conspicuous actors in the history of the world, has had his critics and his panegyrists. Some have gone to the verge of extreme laudation and others have condemned him with unsparing severity. History will side with neither of these extremists. We may fairly judge him by what he did and what he failed to do. There is no recorded instance of more

admirable tenacity of purpose nor of more unflinching devotion to one single idea; none of courage more steadfast in the face of perils of every kind. If we should measure him by the standard of to-day, nothing that his modern accusers have said in condemnation of many acts alleged against him would be too severe, but the standard of to-day may not with justice be applied to the man who lived four centuries ago.

The accusation against Columbus is the traffic in slaves, but this had been and continued to be the practice of every nation for centuries after him, and of our own country almost to our own generation. It may only be said, and this means much, that he was better than the men who were with him. We may not compare him to the venerable and humane Las Casas, but his name, when placed beside those of others who shared or marred his fortunes, will shine with a lustre rendered brilliant by comparison. It is much to say of any man that he was better than his day. This can be asserted of Columbus. Personally, he appears to have been, in the ordinary relations of life, humane and just; his pursuit of gold was certainly, in a great degree, the result of his anxiety to satisfy the King. Gold he had promised; gold he was bound to furnish, and it was the failure to perform this promise that poisoned his life, cost him his popularity, and hastened his death.

Although the real merit to be attached to his discovery is subject to question, because he started to reach Asia and stumbled upon America, yet he is entitled to our gratitude for the splendid service which he rendered, and to be placed on the roll of humanity's great servants. The obstacles in his way would have

daunted any man not of heroic mould. If he showed an indifference to human life in dealing with the natives, we may not forget that life was cheap in the fifteenth century. Tenderness and hesitancy to shed a brother's blood were not in the morals and practices of the times, indeed they are not now when nations undertake for their own purposes to impress their civilization on an inferior people. That one of the motives which impelled and sustained him throughout was the desire to spread the Gospel through new lands can scarcely be disputed. Whether, after weighing these motives in the scales of infallible and eternal justice, it will be found that this was in truth the mainspring of his action and the pure fountain of his unflinching purpose, or merely incident to a personal end, none can decide. I prefer to accept and to close with the wise and prudent words of the Sovereign Pontiff:

The eminently distinctive point in Columbus is that in crossing the immense expanses of the ocean, he followed an object more grand and more elevated than did the others. Not that he failed to be influenced by the very legitimate ambition to earn and to merit the approval of society, not that he despised the attributes of glory, that concomitant of success, whose spurs often cut more deeply those greatest among men, nor did he disdain entirely the pursuit of personal advantages, but above all those human considerations soared the leading motive in the religion of his forefathers.

Where, indeed, would he have supplied himself with the necessary constancy and strength of soul to endure what he had to suffer and submit to, had he not drawn upon a motive superior to human interests? Contradicted by the learned; repulsed by princes; tossed by the tempest on the furious ocean; more than once deprived of the use of

his eyes by the strain of the long and weary watches; to these must be added the combats sustained against the barbarians; the infidelities of his friends and his companions; the villainous plots and conspiracies; the perfidy of the envious; the calumnies of the traducers, and the traps set against his innocence—this man must inevitably have succumbed under the weight of such great trials and such numerous assaults, had he not been upheld by the conscience of his admirable enterprise, in the success of which he foresaw the greater glory of the Christian name and the salvation of an endless multitude.





VI

THE KOSSUTH MEMORIAL CELEBRATION ¹

WHO was this man whose memory we are met to honor? What claim has he to our reverence? What spell has been wrought about his name that we should pause in our busy lives, and, leaving business, pleasure, or welcome rest, should in solemn reminiscence treat him as one of our kin? Yet, of our kin he was not. The strong ligament of a common ancestry did not bind us to him nor to his people. He had not, nor had they, earned gratitude for valuable service to our nation. Born and bred in a remote and to us untravelled quarter of the world, passionately devoted during all of his active life to the gallant race from which he sprang, an alien in every sense to us and our fathers, what strange history has so deeply knit his name to our hearts that we may mourn for him without insincerity and praise him without affectation? While the funeral bells that tolled a few days ago at Turin echoed throughout the world, the older men among us remembered, and the younger men were taught, that there were giants in those days, and that one of them was dead. It is this claim of his to our reverence that I propose briefly to discuss to-night. It behooves us to single out for

¹ Address delivered at Cooper Union, April 4, 1894.

special demonstrations of posthumous respect none but those who have served the human race. "Is the world better because they have lived?" is a question that must and shall be put, and only when the prompt answer is, that they have so lived as to make men better or wiser or happier for their example, may we justly accord them these funeral honors. The conventional pomp that accompanies men great in power or rank to the grave is of a different order from this. The pathetic but rebellious impotence of wealth yields a grudging assent to the inexorable demands of death and seeks to cheat itself into the belief that it is not all powerless. To this end it resorts to vain and splendid fictions, but the victory of the destroyer is none the less complete. None of the stately trees that Dives loved so well to call his own will follow him to the grave—except the gloomy cypress.

But there are men whom the world loves to keep and fain would never lose. They stand out and apart from the dark crowd that rushes headlong and heedless on the road that all men must tread once. Mercury with his pitiless wand drives them on to the end of the journey, sparing none, though so many clamor for special mercy, and compelling all to bow to the inevitable.

Yet some were not born wholly to die. *Non omnis moriar* may that man truly say who has written his name upon the grateful memories of men. In return for service rendered he may expect, what Kossuth might justly hope for, flowers from loving hands, even in far-away places; kind words, even in a language not his own; gentle thoughts from the lovers of truth, courage, and unselfishness.

To speak at any length of Kossuth's public life and

service before this audience would be presumptuous. That life was short but singularly full. His objects were all noble, his aspirations always high, his thoughts and speech expressive of a nature as heroic as it was generous. He belonged to a noble race. His blood was prepared by generations of loyal forefathers to do battle for his country and his country's freedom, irrespective of personal advantage and of personal peril. An eloquent tongue and a fearless pen made him a formidable champion for the cause he loved. And, as though Fortune had chosen him to be one of her favored children, he reached his full maturity when the moment seemed most propitious for shaking off the burden of wrongs made tolerable only by prescription.

The now dying century was in its early promise when Louis Kossuth was born. Napoleon was yet only Bonaparte, but his star was rapidly rising to its zenith. Austerlitz was soon to startle the world, and at the roar of its victorious guns Pitt was to fall as though struck in the breast by a French bullet. The new States of America were trying with hesitating steps to fit themselves for their mission as the pioneers of freedom. The father of modern democracy was at the helm, hard pushed to steer the ship of state among the breakers. Great Britain was sullen and contemptuous, ill-reconciled to the loss of the colonies that she had so recklessly driven from their allegiance. Andrew Jackson was sharpening his sword for battle and unconsciously preparing for that day at New Orleans when the parent state was taught that the rebels had grown into free and independent men, and had lost none of their vigor because they had changed their flag. The power of the press was in its infancy,

but promised to rule the world. War was the normal condition of Europe. Austerlitz was followed by a dazzling succession of triumphs until the final crash came at Waterloo. But the French Revolution had been marching on, clad in various dress, from the plain garb of the citizen to the imperial purple of that revolution's greatest *parvenu*. Congresses settled matters to suit themselves, but the people had become conscious of their power, and the Hungarian boy learned with the alphabet that the Almighty had not, by irrevocable transfer, committed His authority to frail men who wore a crown and who boasted a pedigree. From the first, the young Magyar was an ardent patriot; his country absorbed and exhausted his faculty of loving. His heart was high and his speech was bold. He had a message to deliver, and deliver it he must. But Free Speech and Imperial Authority make an ill-assorted couple. Free Speech may reason, but Authority may strike. Right may rejoice in Logic, but Might frowns and throttles Logic and Right together and provides them with a jail, until Right and Logic grow so strong that Might is constrained to gentle manners and courteous forms. The presence of cannon is a marvellous promoter of politeness, some one has truly said. But when Kossuth, barely out of adolescence, spoke his lesson, the cannon were all on one side, and then politeness became surplusage. He was called by the ugly name of traitor, because he did not accept what he was bidden to with cheerfulness and uncomplaining alacrity. The family of traitors is large, and we realize to-day that, if some of the traitors who have been treated with thumbscrews and made to dwell in dungeons and to perish by the rope or the axe were to reappear on

earth, we would kneel before them and kiss their hands and bless them as martyrs. So Kossuth was dubbed a traitor because he preached a series of sermons with liberty as his text, and he tasted in this, his early youth, the honor and the horrors of a prison cell. But the world had moved since two great revolutions had taught kings that their consecrated heads could fall under the axe or the knife with the same facility as though they had belonged to the commonest plebeian.

The imprisonment of this one man started the press, and the press stimulated public opinion, and then the danger came to the jailers.

Such a fuss about this Magyar lawyer and scribbler was, of course, absurd and almost indecorous; but if people were unreasonable they must be cajoled and petted into good-humor. And just then a Frenchman with a small body and a stout heart was Minister of Foreign Affairs in France, and knowing the temper of his own people he gave notice that, unless this young traitor were released, France would start a conflagration that would spread over Europe and possibly burn up, in its indiscriminating fury, many things that the world could do without, but which monarchy would sadly miss. So the young traitor was not maimed, nor branded, nor otherwise treated as traitors deserve, and he once more saw the sunshine and breathed the free air and went about his way. That is, he was a deeper-dyed traitor than ever, and wrote for freedom and spoke for freedom as few men had ever spoken or written before. And thus, during the years to come, up to the eventful period of '47, he sowed the seed and watched its growth, and sought to pluck out the cockle that grew with the seed. He was

no wild and furious despiser of law. He was a lawyer bred,—a conservative in the true and best sense,—relying for the conservation of society upon those principles which unite and do not divide the men of a community. All that he wanted was the sum of freedom which permitted the free expansion of his fellow-countrymen's faculties, and the right to develop after their own fashion, not against, but under and in compliance with wise laws. He belonged to that family of far-seeing men who, living perhaps ahead of their day, as such men do, saw that something durable must take the place of the ephemeral structures upon which society had theretofore rested. He knew that democracy was, with giant strides, superseding the rule of the few over the many, and that the future of the world lay in the development of sound, equal, and democratic laws.

In 1847, a few months before the great tornado swept over Europe, he was a recognized leader. He was elected a member for Pesth. His fame had spread and his name was known throughout the continent, and when at last he, and other patriots like himself, beheld the great movement started in France and spreading over Europe, they might almost have said in the enthusiasm of fruition, "*Nunc dimittis, Domine,—*" "Now dost thou, O Lord, dismiss thy servant,—" for the fruit was well-nigh in their hands, mature and beautiful, and the triumph of their cause seemed certain. But Providence did not so will it. The fall was greater even than the triumph. The Old World was not ready for the final leap, nor prepared to discard old governmental superstitions, that it might take its own affairs into its own hands. Events followed each other in rapid and startling succession. The tidal

wave of popular enthusiasm carried Kossuth to the highest positions. For one brief period he was the Governor of Hungary—an independent State! Then came reaction; then disappointment and bloody defeat; then followed persecution, flight, and the bitterness of exile.

I shall not dwell upon these scenes; but what a pathetic commentary upon the fate of a man whose aspirations were all for the benefit of mankind, that he should at last have found no refuge among his own people, none among the neighboring nations, but be left a suppliant for the hospitality of the Sultan of Turkey! And a dependent upon his mercy he remained—to the honor of that Sultan be it said, safe and protected against the demand of those who would have seized him to treat him as they chose.

Whether Turkey would have delivered Kossuth to those who demanded him or not unless the United States had intervened, and by friendly remonstrance and entreaty impressed upon that Government the duty of protecting the fugitives from their persecutors, we may only conjecture and need not inquire. The time did come when our Government, stimulated and aroused by the demands of our people, sent a ship carrying at its mast-head the stars and stripes, and did itself the great honor of receiving as its guest the hero of the Hungarian revolution. There for the first time he felt safe and free. There he knew that neither threats nor blandishments could imperil his safety; that not a hair of his head would be touched so long as that flag assumed the duty of protecting him.

But even when he reached our shores, and was received with acclamations that rang through the whole breadth and length of the land, his heart was sore and

sick. He made no pretence of being comforted even by the glorious reception that was freely given him. It touched but did not cure his heart, which ached in spite of processions and banquets and ringing shouts of welcome; it continued to yearn for the land that he had hoped to free, but which, alas! seemed farther from freedom than when he undertook her cause. Listen to the first words that he spoke when our city received him. You will hear the note that rang through all his addresses. His bodily presence was in America, but the spirit and the high hopes were buried in his native land.

Alas! [he cried, when he was received by our city authorities on his arrival] I have no home, and the freedom of my people is downtrodden. Young giant of free America, do not tell me that thy shores are an asylum to the oppressed and a home to the homeless exile. An asylum it is, but all the blessings of your glorious country, can they drown into oblivion the longings of the heart and the fond desires for our native land? My beloved native land! Thy very sufferings make thee but dearer to my heart; thy bleeding image dwells with me when I awake, as it rests with me in the short moments of my restless sleep. It has accompanied me over the waves. It will accompany me when I go back to fight over again the battle of thy freedom once more. I have no idea but thee; I have no feeling but for thee.

Never in our history was such a generous reception accorded to a man of alien blood, unless we except the welcome that Lafayette received when he revisited America in 1824. Then, indeed, the popular heart was touched and the imagination of the people pictured many solemn scenes that were significant of

personal participation to men then living. Jefferson continued to raise tobacco and to dispense lavish hospitality at Monticello, while his old enemy John Adams, with unabated vigor, confided his resentments and prejudices to his diary. Lafayette could compare the growing city of 160,000 inhabitants with the small village that he had seen at the end of the last century. He could gaze at the banners that floated gaily to the breeze and find familiar beauty in every stripe, well-known grace in every fold, the memory of hopes now ripened in every star. The republic was no stranger to him, for he and men of his blood had done much to build it; he needed no guide over the battle-fields, for he had slept on them, fought on them, and with the traditional gaiety of his race he had laughed there at danger and played with death. Among the founders and citizens he stood as one of themselves—nay, was he not the first of all, since Washington had called him "Son," and thus ennobled him as he had ennobled no other man? What royal parchment ever bestowed such a dignity as this? And if perchance in the years gone by he had forgotten something of the geography of the old colonies and of the new States, we may believe that he still remembered the great days of Yorktown, when he shared with Washington the glory and immortal honor of dealing the heaviest and the final blow to his adopted country's foe.

But Kossuth was a stranger save as fame had carried his name over the seas from old Europe to new America. His heart was full of gratitude, but not of joy. His hopes may not yet have died, but they clustered about and clung to the old land of his people; they had no dwelling-place among us. Webster with great beauty and pathos pictured the condition of these

patriots when he wrote to Mr. Marsh at Constantinople, and bade him in the name of our Government to intercede for the liberation of the Hungarian patriots.

For their attempt at independence, they have most dearly paid, and now broken in fortune and in heart, without home or country, a band of exiles whose only future is a tearful remembrance of the past, whose only request is to spend their remaining days in obscure industry, they wait the permission of his Imperial Majesty to remove themselves, and all that may remain to them, across the ocean to the uncultivated regions of America, and leave forever a continent which to them has become more gloomy than the wilderness, more lone and dreary than the desert.

But Kossuth was not content with barren hurrahs and splendid feasts. He undertook to storm the citadel of a nation's heart, and he succeeded. He ventured to capture their understanding, to direct their will, to throw aside their traditional rules of conduct; he deliberately sought to involve this nation into European quarrels. Earnestly and with almost irresistible eloquence he besought our Government to come forward as the champion of oppressed nationalities, to relieve his struggling people by direct interference, and to turn its back upon the wholesome rules of international neutrality which had thus far been observed. Strange to say, the witchery of his voice almost carried the day. Circe, with her accents of resistless melody, was not more potent to lure men to her will than this inspired stranger. He stifled the voice of reason; he threw a spell over men of calm judgment and led them captives in his triumphant train. We may now realize that the United States escaped one of the greatest perils in its history, but

we must recognize, too, the matchless power and sincerity of the advocate. How lovingly and tenderly and earnestly he pleaded for his beloved Hungary—his mistress, his divinity, his everything! The example is unique. Demosthenes might inflame the Athenians against Philip, but he urged them in his and their own tongue to resist his and their own enemy. Cicero might inveigh against Catiline, but he was the advocate of those whom he addressed, and the pictures that he drew of probable evils were dangers personal to his hearers. Chatham and Pitt, Burke and Mirabeau and Patrick Henry, what was their task in comparison to his? They and all of them touched the ever-responsive chord of self-interest and of common advantage in the audiences that they controlled. What man since Peter the Hermit's day could preach a crusade based purely on sentiment? Indeed, the comparison fails, for the one appealed to the deep religious sense of all who heard him, while the Hungarian exile could only promise those vague and unsatisfactory rewards that follow the accomplishment of a duty most uncertain in its obligation, but most certain in its danger.

Yet he almost succeeded. And indescribably great must the credit of this mitigated success be held. The nation *was* startled from its propriety, and Reason, confused and hesitating, ready to leave her throne. But there was one voice still more potent than Kossuth's, even then. It came from Washington's last resting-place, and warned the American people with prophetic voice of the dangers of foreign adventure. And finally the people, returning to their sober senses, heeded the charmer's voice only so far as it commanded their love, respect, and sympathy.

But when America refused to interfere in behalf of

his people Kossuth knew that he must surrender all hope; he must submit to the inevitable and trust to the slow processes of time to do what he had failed to do. Yet the world knew and honored him. With pen and sword and voice he had done his best, and what epitaph is worth those simple words? He had, indeed, done his best for the land that he loved. He has just died full of years and of honor, but he saw, as age began to dim his eyes, the flag of our Union, crowded with ever-multiplying stars, foremost among the nations. He saw and felt that the experiment of government for the people and by the people was triumphantly made, and that the result would silence doubt, convince sceptics, and enfranchise the world. He lived and died a patriot in the best, the truest, the noblest sense. And if I may, in closing, link Kossuth in my thoughts with our own country, I would ask of Providence that in the hours of trial every one of our people may love America as Kossuth loved Hungary. With such Americans we may direct the destinies of the world for the happiness of mankind.





VII

JACKSON ¹

THE 8th of January is one of the halting-places, I will not say of the American people, but of the Democratic party. All great organizations, political or religious, must have their day or days of rest, when the hero or saint is honored by those who revere his memory, admire his deeds, or find it profitable to hold out his example. The day that we celebrate is one of those, and serves to recall the services and perpetuate the fame of Andrew Jackson. As Montaigne once said that he loved sometimes to "wrap himself up in the memory of his father," so may we find it wholesome to take counsel with the wise and brave men who speak from beyond the grave.

This is emphatically Jackson's day. The battle that it more immediately recalls, so far as its importance may be measured by the destruction which it caused, scarcely deserves the name. We who have gone through the ghastly experiences of a civil war that dragged itself through four long, weary years, marked by constantly recurring battles, each one of which desolated thousands of homes, can scarcely understand that this skirmish on the Mississippi's

¹ An address before the New York County Democracy, January 9, 1888.

muddy banks should have risen to the dignity of a battle. And yet it destroyed the prestige of British arms on American soil forever; it averted from New Orleans the danger of capture at a time when indescribable atrocities were tolerated by public opinion; and it crushed the insolence which the late "rebels" had had to contend with since the recognition of their independence.

By a strange freak of fortune, it was fought after the peace had been made, and in the interval between the signing of that peace and the time when the news could pitch and roll its slow way across the Atlantic. If Morse had but anticipated his marvels by half a century, the battle would never have been fought, Andrew Jackson would never have been President of the United States, and we would not have been here to-night to do him honor. But the blind goddess, Fortune, had evidently determined that our hero should have that signal opportunity to show what a hot-headed, strong-minded, reckless, fearless, earnest Scotch-Irishman from South Carolina could do, and she saw to it that no telegraph, or carrier pigeon, or fleet steamer interfered with him. As the convenient deities of Homeric times disposed all things so that their favored children should meet their foes under such conditions that they could not well avoid destroying them, so she, anxious lest the short period at her command should rob her of her opportunity, dropped some fatal poison into the British general's mind, and he, bereft of reason and prudence, must attack and assault his well-entrenched foe. It took him just thirty minutes to lose all—except his honor. His life and the lives or liberty of 2600 men paid forfeit for his rashness. In that half hour Andrew Jackson

became the foremost man of America. He had inflicted on the British army the most humiliating and the most complete defeat that they had ever suffered, and this at the cost of eight men killed and thirteen wounded. The descendants of Cromwell's iron soldiers, of the men whose backs the enemies had never seen, fled on that day in confusion and panic before the ragged militia whom it was part of their profession to despise. A more signal and complete victory for the one side and a more humiliating discomfiture for the other history does not record. Might not the triumphant General exclaim, like Henry the Fifth after Agincourt:

When, without stratagem,
But in plain shock and even play of battle,
Was ever known so great and little loss,
On the one part and on the other!

And when slow Peace reached our shores at last, and was received, as she deserved to be, with wild exultation and delight, she found that the prestige of American arms had been raised in the twinkling of an eye—to be more accurate, in the brief period of twenty-five minutes—to an unexpected height. From that time forth it was reasonably certain that the military qualities of the American people would be spoken of and treated with decent respect.

The hold which military men gain by their exploits upon the affections of their fellow-citizens must ever be a subject of wonder and despair to the civilian. All the wisdom of Minerva, all the learning of the schools, all the eloquence, the civic worth, and the moral qualities that may be united in the person of nature's most gifted children, must give way when the

conquering hero, clad in his martial glory, appears upon the scene. For him no rewards are too brilliant, no prizes too high—for him women smile and poets sing. Him, for want of a better name, we call the providential man, and reverently point out as the chosen vessel, the standard-bearer, the anointed before whom all others must bow in homage. And it is natural that this should be, so long as the sword typifies the guardianship of national honor, the protection of domestic safety, and the integrity of political institutions. Jackson had been a lawyer, a district attorney, a congressman, a judge, and a senator, but none of his admirers had ever dreamed that his performances in civil life entitled him to especial regard. As a practising lawyer, he was always ready to settle his disputes by the rules of the code of honor. As a judge, he no doubt rendered decisions more or less satisfactory to his suitors, but as he wisely abstained from putting his opinions in writing, he succeeded in obtaining a negative fame which is, perhaps, all that he could aspire to in that field of usefulness. As a senator, he made few speeches of which we have any record. His silence may have been due to another cause than reticence or modesty. Jefferson said to Webster that he had often seen him rise in his seat and try to speak—an effort which the rage that choked him made abortive. When he lost his temper—a not uncommon occurrence—he was an uncomfortable friend and a still more uncomfortable enemy. Nothing was easier for him than to get into a frenzy of rage, nothing pleasanter than to fight. He was, in a sense, the typical man of the age in which he lived and of the rough country in which he passed part of his life. His duels were frequent; in one he slew his adversary, but

it does not appear to have occurred to him that there was anything reprehensible in the transaction. He would have considered it eminently proper for his adversary to mete out the same treatment to himself.

And even when he professed—with the sincerity that was part of his nature—a deep religious devotion and a thorough belief in divine revelation, he did not, as far as we are informed, appear to have regarded these matters as entitled to sorrowful retrospection.

In various instances he showed an arbitrary and resentful spirit which his best friends must condemn. His exercise of authority was sometimes harsh and oppressive; in Florida, in New Orleans, in Washington, his proud and aggressive spirit led him into acts which cannot stand the test of impartial criticism. And yet, with all his faults, Andrew Jackson became the idol of our people. His popularity was, and remains, an accepted and abiding factor in our history. Even now, after our Civil War has rooted up so many traditions and rudely removed so many of our landmarks, we look back upon him with mingled pride, gratitude, and admiration. We feel to this day the benefits of his services and forget the defects, as we contemplate the greater beauties, of his character.

If we are asked, then, "Why is Andrew Jackson a popular hero? Why is this day celebrated and set apart by so many of his people?" the answer is easy. He was brave, unselfish, patriotic; he was of the people and with the people. He was honest in his acts, his words, his intentions, and men felt that there was not a day of his life, nor an hour of a day, when he would have hesitated one instant to lay down his life for his country. He was emphatically and truly

a man of the people. I mean this in its real sense; not that he failed in his education, or intelligence, or moral training to be above the average of his countrymen, but that his instincts were all in favor of the people,—their rights, their interests, their honor.

The majesty of Washington, the unruffled dignity of Jefferson, the old-time courtesy of their successors, was followed by the unrestrained, impulsive, explosive methods which accompanied the old hero wherever he went. The calm serenity of the self-contained gentlemen who preceded Jackson placed them upon a higher plane than the mass of their fellow-citizens. Democrats they certainly were in their theories of government, in their love of the people, in their hatred of tyranny, in their devotion to the popular cause, but at the same time the decorum of their manners and the dignity of their bearing bore a close resemblance to those traits which are popularly supposed to be the accompaniments of gentle birth and exalted political station. Jackson was unlike his predecessors in these respects, and it might well be said that for the first time his fellow-citizens saw in the White House a man like themselves. And yet he, too, was a gentleman, not less than those who preceded him.

In the truest and best sense, no finer gentleman lived in the land than he. The courtesy which is ever tender to weakness, and respectful to woman because she is a woman; the chivalry that makes a man the prompt champion of those who need a champion; the self-respect which keeps from meanness, or treachery, or coarseness,—all these things he had in the highest degree. He was a gentleman like Bayard or like Sidney, without fear and without reproach, and if he

lacked at times some of the graces, he never wanted the true characteristics, of a genuine knight.

Perhaps the strongest element in Andrew Jackson's character was his courage. Not only the courage to defy death on the battle-field or on the duelling-ground. The soldier's courage is not rare. Readiness to die for honor or for country's sake is common in all nations. We have learned from a bitter experience that courage of that kind is a plant that grows all over our country and flourishes at the North and at the South, in the rich man's home, the farmhouse, the workshop—everywhere. But there is another kind of courage,—the courage to defy opinion and the fears of self-interest,—because of conscience; the courage that Pilate lacked when he rendered an unjust judgment because he feared the people; the courage that can stand unshaken when expediency throttles duty and interest 'demands silence while Truth strives to raise her voice; the sort of courage that is not quickened by the cry of the bugle, nor the sound of the drum, nor the eyes of thousands looking on, nor by the love of glory, but the courage of solitude and the quiet study; of the obedient pen, of silent reflection; the courage which will not be put off with "It may not be," but will firmly resolve "It must be," when the *right* of the question is decided. This is the rare courage to which I allude. It was this courage that marked Andrew Jackson all through his life. "I care nothing about a clamor," he once said; "I do precisely what I think just and right." And our people have a faculty, I think, of discovering this courage when it exists in their servants. Andrew Jackson is not the only Democratic President who has been willing to take the risk of clamors. He is not

the only one who has shown himself ready to do his duty to the people that honored him, by speaking fully and freely what should be said, leaving the consequences to blossom and bear such fruit as might be best. The moral laws are the same in high office as in common, every-day life. To be honest and brave is simple duty in the one case as in the other,—a commonplace truth, but one too often forgotten.

Allied to this quality in Jackson's character was another which shines conspicuously through his life,—I mean his sterling, burning, absorbing love of country. Ambitious of personal fame he may have been,—he doubtless was. He could not but feel that he was a leader of men and strive for the position that nature had fitted him to fill. But through all his public acts, utterances, and efforts he was always a patriot. The love of country was a part of his fiery nature and burned fiercely through his life. The enemy of his country was the enemy of Andrew Jackson, and as such, it became the personal business of Andrew Jackson to punish him for daring to be his enemy. Perhaps in our day of frequent and rapid communication with other parts of the world, with a constantly flowing tide of immigration to bring us into daily and friendly contact with alien nations, the fierce and aggressive love of country, which animated such men as he, may have been modified and may have lost some of its intensity. But however this may be, the patriotism of the early heroes of our country was of an uncompromising kind. They had, it is true, a sentimental attachment for France, and for the brave men who had helped the young States in their distress, but beyond this they had nothing to draw them to the peoples of Europe. The Atlantic was an angry

barrier to intercourse. The recollections of the war were still alive and rankling. New York had but too good reason to recall the horrors and cruelties that had been wreaked upon her people, and it was not in those early days of the century that British or Hessian soldiers could be remembered without execration.

Andrew Jackson was not only brave and patriotic, but he was also honest. Not in the vulgar sense of that word do I use the expression. It is no praise—or should not be—of a public man to say that he did not filch money from the public treasury or enrich himself by doubtful means. His honesty was of a higher and broader order. It was of a generous quality. It lay in his hatred of falsehood and of trickery, in his directness and his truth, in his single-mindedness, in his readiness to adopt straight and open ways. He might be and often was wrong in his hasty conclusions, in his rash advocacy of those whom he loved, in his fierce warfare upon those whom he did not respect. His feud with Henry Clay, his conviction that that great and honored statesman had been guilty of dishonorable conduct toward himself, ended only with his life. Evidence had no weight with him when he had made up his judgment. But no enemy could ever say that his ways were tortuous or dark. He was as honest to the adversary as to the friend, and if the people loved and honored him during his life, it was not only because of his conspicuous services on the occasion that we now recall, but also and mainly because they understood him, and knew how brave and patriotic and true and honest was this irascible warrior. He incarnated not only American democracy, but American manhood, in its best qualities, and if he gained such an ascendancy upon American minds it

was owing to the fact that he, more than any other man of his day, represented in his person those manly virtues which the American people most cherished as their own. His failings were overlooked and forgiven, if they did not enhance his popularity. The instinct of our people will rise in angry rebellion at those vices which spring from a mean and sordid nature,—those are too deep-rooted to be cured,—but they will generously condone the rank growth of a generous vitality, the rich exuberance of an ardent temperament, the exaggerated and even violent manifestation of honest sentiments springing from pure sources and laudable ambitions. It mattered little to the American people of forty years ago that their favorite hero had been involved in countless brawls, in many duels, in angry quarrels without cause,—the opinion of the day tolerated these things. But the people knew that the treasury of the nation, the honor of a woman, the flag of the country, were all and always safe in Andrew Jackson's hands.

General Jackson's life was one brilliant success, but the real greatness and beauty of his character never shone forth so truly as when the hand of death was laid gently upon him. The tough cords of the old soldier's life did not snap suddenly from over-tension. He had ample time to look the destroyer calmly in the face and become familiar with his features. He was ready for the conqueror, and made no murmur nor repined at the sufferings which preceded the final moment. With the patience of a martyr and the gentleness of a tender woman, with absolute submission to the Divine will, with unflinching courage and stoical endurance, with a persistent love of country that only died when he died, he watched his own

approaching dissolution, forgetting his own agony to comfort those whom he loved. All the anger and resentments of former days had been burned out by much suffering, nobly borne, and it was the real Andrew Jackson, true, generous, kindly, pure, and brave, who finally surrendered his soul to his Maker and his memory to his countrymen.

Why is it that alone we, of the Democratic faith, claim this man as our own? Is there anything in his fame to repel men of any political faith? Did he not serve all his brethren? Was not his heart large enough to embrace them all? Let us hope that the only reason is that we seized upon and first appropriated him as one of our political patron saints. We cannot well afford to part with or divide him. His principles are ours, his objects are ours, his political ideas are ours. He loved his country, and he loved the whole of it. While he was battling at New Orleans under such fierce odds, the Hartford Convention was hatching treasonable doctrines which might have been warmed into life but for his victory of that day.

But we may well feel assured that vigorous as would have been his repression of rebellious acts, that repression would never have been followed by persistent hatred or malignant cruelty. His brothers of Connecticut or Massachusetts, even if it had been necessary to coerce them into good behavior, would still have been his brethren. To use past differences between sections of his country as a means of aggrandizement would have been as foreign to his nature as meanness or deceit. The men of Kentucky and Tennessee would never have been forgotten by him as the heroes of New Orleans. And if he lived now, with his great, generous heart beating in his heroic breast, on what

side, think you, would he be? On ours, when we proclaim the universal brotherhood of American citizens, or with those who coin past horrors into present political agencies and seek to capture the country by dividing it? Perhaps the lines of difference between our great political parties are dimly drawn. It may be that the old and distinguishing characteristics have been erased by time and newly developed interests. But we may proudly and confidently assert that the party of General Jackson, the Democracy of to-day, will recognize and tolerate no dividing line between the States of this Union; that the fatal war that blotted out the only cause of difference between two great sections is at an end, and rejoice that cruel and harsh as was the experience of that war, it has been compensated by the one fact that the fatal line of demarcation between North and South has been washed away in blood. And when demagogues, hungry for spoils and eager for success, seek to revive bitter memories and to re-create old animosities, the party of Jackson will stand upon its old ground, it will claim equal rights for all our people, it will recognize no differences based on ancient feuds, but will seek to adjust its methods to its aspirations, that its triumph may be the triumph of true, national, vigorous, generous democracy.





VIII

MEMORIAL OF CHARLES O'CONOR ¹

THE name of Charles O'Conor has within the last year been added to our mortuary roll. If our practice of recording the memorable traits of departed brethren were merely intended to erect a monument to the perpetuation of their fame, we might in this instance intermit our custom. *His* fame has passed into history; whatever there may be that is durable in a lawyer's greatness belongs to him by the common consent of his contemporaries.

The career of our deceased brother was one of constantly growing brilliancy, until he attained the highest eminence which a lawyer can reach. He was the leader of our bar. No rival claimant disputed his supremacy. His pre-eminence was recognized even while he lived. His was the rare privilege of retiring from active life of his own will, neither coerced by failing powers nor admonished by hesitating clients that his usefulness was on the wane. When the end did come, the final seal was placed upon the judgment of his contemporaries. The press, the bar, the people, united in the verdict which half a century's unremitting work had earned.

¹ Read before the Association of the Bar of the City of New York, January, 1885.

It is difficult on occasions of this kind to avoid the language of apparently extravagant eulogy. Affection often misleads the living members of our calling into an exaggerated expression of the virtues and merits of our dead. Indulgent custom deals leniently with this failing, and makes allowance for its exercise. But we may recall the career of the departed in this instance without fear of such criticism. That he was free from the weaknesses that beset, in some form, all that is human, it would be folly to assert; that he did embody all the qualities of courage, honor, industry, and fidelity which make up the highest standard of professional excellence, it would be injustice to deny. The chief justice of our highest court, while presiding at the meeting held for the purpose of paying a tribute of respect to the memory of Mr. O'Connor, spoke of his professional record as "one unrivalled in our annals for length of service and brilliancy of professional achievement." This deliberate language embodied the universal thought.

Every man's life, when it is worth recording, leaves behind it a lesson worth remembering. More especially those of the same profession or pursuit may ponder upon its teachings with advantage. How and why was success attained? Was it the ripe fruit of long study and patient labor? Was it taken by storm in the temple which genius forces open, laughing at time and difficulties and conventional rules?

Was it bought at a higher cost than it deserved? Did the fruit leave the aftertaste of bitterness when he that plucked it recalled the means by which it was secured? These questions are easily answered where Mr. O'Connor is concerned.

The success of Charles O'Connor was not due to any

combination of favorable circumstances, nor to any of those brilliant gifts that dazzle the eyes of men and take their judgment captive. It was from the beginning logical. Other things being equal, it was as certain as the harvest is certain after the seed has been sown. He had all the qualities, moral, physical, and intellectual, that compel success. Of a vigorous and commanding presence, of a rugged and almost aggressive conscientiousness, of a strong, acute, and discerning mind, he was singularly endowed by nature to fill his part. Indeed, no combination short of this could produce the result of that half-century's work. When we examine the reports of the cases in which he was engaged, remembering the minute labor that he always bestowed upon their preparation; when we consider the nature of the questions that he had to grapple with, the time given to consultations, and the writing of opinions, the days spent or wasted in court, the work of that lifetime seems absolutely marvellous. Nothing but unremitting and unrelieved toil could achieve such a result. What a story of self-denial and patience, of labor loved for its own sake, of professional, all-absorbing zeal such a life reveals! If constant toil, leavened by an ever-watchful conscience, ascends to heaven as a prayer, no faithful monk, whose supplications began with the dawn and lasted through half the hours of the night, more earnestly and persistently clamored at heaven's gate. Of our friend indeed it might be said: "To labor was to pray."

The real secret of Mr. O'Connor's success—if that term may be applied here—lay in no one element of his character. He could not have succeeded without either. Men have lived, and are living now, as brave as he; others as industrious, others as true, others as

able intellectually. But the union of these qualities to the same extent, in one man, has probably not existed in our generation, or in his. Without the courage, he would have halted before many a danger that he overcame. Strike out the indomitable industry, and the enemy would have sown the tares that no after-labor could destroy. Without that sleepless conscience, the whole would have been marred and mutilated. Many a richly gifted nature, fired by the noblest ambition, has failed because the industry, the honor, or the faith was gone—or slept.

The necessary limits of such a paper as the present render even a cursory examination of Mr. O'Connor's professional life out of the question. No effort at condensation could successfully epitomize the history of the professional battles in which he played a conspicuous part. There were few contests of any magnitude or importance in which he was not called on to participate. The suitor who succeeded in securing his co-operation felt assured that the victory would be his if ever-wakeful vigilance and untiring effort could secure it. The responsibility, the care, the anxieties, were transferred to, or at least shared by, one strong enough and willing to take them all to himself. If there was any weapon in the arsenal of professional warfare that could help to win the battle, it would be found and used. What he once told an associate in the Forrest case, as it was ripening for trial, might have been said of every great controversy in which he was engaged: "I have not left a stone unturned under which there crept a living thing." And all the while, not content with unearthing the proofs and precedents and laws that bore upon his case, his watchful eye never left his foe. It may well

be—indeed it must be—that he sometimes erred; but in forensic contests he showed that, as in war, the greatest leader is not the one who never blunders—for such a one never lived,—but he who soonest sees and repairs the blunder. The result of all this expenditure of power and of labor was not only success at the moment, but even now, when we look back and study what time has left of these efforts, we are filled with wonder and admiration at the perfect and artistic finish of the performance. His arguments are pitiless in their logic; they leave no room for escape, no loophole for evasion. There is no trusting to rhetoric, no reliance on doubtful precedents, no assumption of premises not based on principles. Authorities seemingly against him are stripped of their sophistry, and shown to be what they are. The sources of judicial error are traced with the certainty of mathematical demonstration. And to do this he is armed with a command of language admirably fitted to his mind and purpose, clear as the language of science, avoiding ornament, deflecting neither to the right nor to the left, simple but perfect, a creation of his own,—original, unique, and inimitable.

It may suggest itself to the minds of our younger generation, that with Mr. O'Connor the last of that race of lawyers has gone. When he commenced to practise, our now imperial city was still in its infancy. At the time of his admission, New York counted less than 200,000 inhabitants. Brooklyn was a mere rural village. The new appliances for facilitating and expediting labor had not come into use. The lawyer's business was not done by steam and electricity. Stenographic reports, which nominally lighten his work, did not then expand the volume of testimony

into appalling masses of inextricable and bewildering verbiage. Courts were not crushed under the ever-increasing weights of their calendars, nor impatient of speech, and anxious only to prevent the advocate from making clear to them that which they can never get by intuition, and seldom by briefs, unaided by oral argument. The trial of causes, while exhibiting less of the faculty of the advocate for witty personalities and irrelevant humor, gave him full scope to develop his case and to make it clear to the court and jury. The secret of nursing a trial into months, of filling octavo volumes with miscalled evidence, of burying the issues under depths beyond the reach of human ingenuity, was not yet found. The judge took his own minutes, and was generally satisfied with a narrative from the lips of each witness. He used this simple record to settle the case. Occasional injustice may have resulted from these primitive methods. Whether the system was better or was worse, it was certainly different from that now in force, and time alone will tell whether the excited atmosphere in which both client and counsel now live will ever give the world such men as Charles O'Connor and other leading advocates of a past generation.

The courage of Mr. O'Connor, of which mention has been made, was of a rare order. Whether he was one of the very few men who are born without the sensation of fear, or whether his strong judgment and cool will had taught him to control and thrust aside all weaker impulses, it is not useful to inquire. His courage was large enough to cover every emergency and to brave every kind of danger. Indeed, it assumed a very rare form in our nation and age, viz., the ability to disregard and face the disapproval of

the public. Many men whose personal courage is equal to all requirements of the battle-field have quailed before the adverse manifestation of public opinion. It may fairly be claimed, that the fear or the hope that public sentiment would be for or against his action, in a given case, never influenced him to any appreciable extent. He took counsel from his own judgment and tested the results by his own sense of right. Nothing that his reason approved and his conscience endorsed could be omitted in deference to the prejudices or sentiments of others. On many questions of vital importance to our national policy, he was at variance during the last quarter of a century with the general sentiment of his countrymen. He never concealed his opinions, nor apologized for expressing them. When he was misled into harsh judgments of men, he did not hesitate to recall words the injustice of which was made apparent; but his opinions on public questions remained unchanged, even when they were most unpopular. It is not a little to the credit of his fellow-citizens that he never forfeited their affection by differing from them, and retained their respect even when he most offended their judgment.

In one instance only did Mr. O'Connor show an oversensitive regard for public sentiment and deem it his duty to defend himself against unjust charges. Many members of this Association will recall his appearance here for the last time, to demand an investigation into certain published statements reflecting upon his treatment of Mrs. Forrest after the trial of her suit. He was probably the only member of this body who thought that such loose and palpably unfounded accusations should be noticed. But a suggestion to that

effect met with indignant rejection at his hands. The investigation was had, and not only showed the charges to be absolutely untrue, but exhibited in a striking degree the chivalrous character of his advocacy in that celebrated case.

But there is no trait in Mr. O'Connor's character which is more deserving of mention here than that which is perhaps the least known—I mean the tenderness and gentleness of his heart. To those who only met him in the contests of the courts, it will seem scarcely credible that this stern, unbending exterior was but the outer covering of a nature as gentle and loving as a woman's. The real man was not the one that was seen, admired, and feared. Only a few had the privilege of knowing the true man, when neither the exigencies of his profession nor a certain ostentation of sternness held in concealment the lovable elements that were so strong within.

Strange to say, it was the very consciousness of his weakness—if so inadequate and inaccurate an expression may be used—that made him the more timid of betraying emotion. He was aware that if he yielded for a moment to the promptings of his gentler nature, his self-control would fail him. All those who knew him well bear witness to this. A tale of distress, a bit of pathos in literature, a touching poem, would strike and thrill a chord of tenderest sympathy. In the intimacy of private life—with those whom he trusted and loved—his feelings sometimes asserted their mastery over his artificial nature, and then this clear, practical, vigorous advocate would recite his favorite verses or repeat his favorite prose passages from great authors while the tears coursed down his cheeks.

An intimate friend of Mr. O'Connor recalls in a letter to the writer of this memorial some touching illustrations of this tendency.

The pathetic element [he says] was strong in Mr. O'Connor's nature. I have many proofs of it, but the following will answer our purpose: In 1867, we were passengers together on the evening boat for Albany. Nearly all others had gone to their rooms, but it being a balmy summer night, we lingered, walking on the aft deck. Mr. O'Connor spoke of the leading members of the Bar when he began the practice of his profession. He extolled Thomas Addis Emmet in particular, as a man of undeviating rectitude, of wonderful power as an orator, a grand, natural man, free from all artificial pretensions—"He was my idol; I have seen none other like him." He then spoke of William Sampson, whom he had known well, and quoted fragments of his article on the "Irish Emigrant": "He was born in a land which no longer was his; in the midst of plenty his children ate the bread of poverty; he toiled for a landlord whose face he never saw; he heard there was a great country beyond the sea where . . ."

Up to this I was not looking at Mr. O'Connor. I felt that his emotion was increasing and his voice tremulous. He had now lost control of himself, and suddenly rose. The light shone full on his face. I saw that tears had started from his eyes. Partly regaining his habitual control, he said:

"You must forget this. Pathos always overcomes me—for that reason I avoid it. But there is no great offence in it to-night. Are we not both sons of the Irish Emigrant?"

Nor was it morbid sentiment, the outcome of an overwrought mind dwelling only on itself; it was a real softness of heart, manifested as well in the practical channels of human sympathy. How many times his

ready and generous hand dried the tears of the unfortunate, how often he has clothed the naked and fed the hungry, no man can tell. What his right hand gave, even his left hand never knew. But kindly deeds will blossom up and smile at the efforts of their author to keep them concealed. If Erskine's beautiful thought be true, that at the last day men's good deeds will stand by them, their advocates, to defend and guard them, he will not at that hour be defenceless.

Mr. O'Connor never forgot a service or a kindness. No man ever befriended him in vain. It was not in his nature to forget anything, a service or an injury, and in his earlier days at least he could bide his time and punish the offender with a vigorous hand. But he was still more faithful when he was dealing with one who had served him. A very prominent banker of New York once did him a personal service of a peculiar kind, neither involving money advances nor any considerable sacrifice, but yet one which could only be asked of and rendered by a friend. Years after, Mr. O'Connor was called upon by this gentleman to lend him professional assistance in an affair involving millions of dollars. The assistance was given promptly, efficiently, and satisfactorily. When asked to name his compensation, Mr. O'Connor refused to fix or accept any. He had not forgotten the service that he had received. Every importunity failed, but at last, upon being told by the client that he would never venture to seek his aid in the future if he persisted, Mr. O'Connor said to him, "Then fix my fee and give it to a charity." The result was a contribution of \$5000 to an orphan asylum, that sum being, according to the client, a very small compensation for the service rendered.

This is a single illustration of two of Mr. O'Connor's

marked characteristics—fidelity to friends and generosity in money matters. Indeed, money was ever secondary in his estimate of professional life, and his disinterestedness was as conspicuous as his learning or his ability. The gentleman of whom mention has just been made knew Mr. O'Connor better and more thoroughly than most of those who enjoyed his confidence. The earnest tribute that he has paid Mr. O'Connor in conversation and in correspondence, the many traits of gentle, kindly, considerate friendship, which he has to relate, would depict him in his true colors and make a picture of surpassing moral beauty if it could here be reproduced. But his glowing language of eulogy may well be adopted here, as embodying the opinion of those who had fathomed the depth and explored the wealth of that gifted nature: "Can you wonder that I cherish and venerate the memory of such a man, to whom the Almighty had given the brightest intellect, the tenderest heart, and the most fearless spirit?"

Mr. O'Connor's end was such as he would have wished. He may be said to have twice crossed the Valley of the Shadow of Death. It was a familiar face, and a friendly one, that smilingly called him away. He had had all of life that it could give, and as the infirmities of old age began with gentle admonition to remind him that the night was at hand, he felt that his work was done. Life without labor would have been beyond his ability to endure—beyond his courage, perhaps, to face. So, with the old faith of his fathers strong in his heart, with an unstained record and a certain hope of glorious life beyond the grave, he fell quietly asleep. The beautiful lines of his favorite poet, Milton,—lines that he loved to quote,

—come back to us a fitting close to this tribute of affectionate reverence:

So may'st thou live, till like ripe fruit thou drop
Into thy mother's lap, or be with ease
Gathered, not harshly plucked, for death mature—
This is old age.





IX

MONTESQUIEU ¹

MONTESQUIEU, Charles Louis Secondat de la Brede, was born at Château de la Brede, near Bordeaux, in the month of January, 1689. He lived sixty-six years, and died on the tenth day of February, 1755. If we should omit his literary performances from the record of his life, and consider his existence apart from his books, the record would end here, and it might be said of him, as has been justly said of some royal personages, that he was born, he lived, and he died. Not only was that life uneventful, but it was studiously shut off from the public eye. He shrank from those who would peer into his privacy, and reserved that part of himself for his family and his friends. He loved fame, that is, the honorable repute that grew out of the intellectual productions with which he enriched the world. Apart from these, as Horace, whom he resembled in many ways, has said of himself: "He sought the secret way and unfrequented path of life that steals away unknown."

That he was thoroughly a gentleman in the best sense of the word—courteous, gentle, kindly, and unassuming,—all who knew him testify; withal a

¹ Introduction to a translation of *The Spirit of Laws*, 1899.

genuine Gascon in the sparkle of his speech, in the southern brogue that he patriotically exaggerated, in his wit and effervescence, in all the qualities that he derived from the sunny atmosphere of his native Gascony and the ruddy wines that flowed so freely from the land that he dearly loved to the end.

Writers with an ingenious turn for the discovery of analogies have compared him to Voltaire, who was born but a few years after Montesquieu and survived him many years. Voltaire was undoubtedly a man of rare genius and unequalled skill when it came to the work of destruction. To demolish ancient things was the task in which he excelled and which he delighted to perform. His bitterness against the social system of which the Church was an integral part displayed itself with all the venom of personal enmity; it was flavored with the passion of revenge rather than a desire to promote right and to prevent wrong. Throughout all his aggressive life this feature was apparent; it existed in fact and showed itself by unmistakable symptoms. Nor was it without reason. In his early youth he had been subjected to personal indignities at the hands of blue-blooded men who considered it the privilege of their caste to disregard the claims of those whose pedigree was not as long as their own; they laughed to scorn the demands for satisfaction of such, however grievously and wantonly they had been injured. When Voltaire sought to obtain redress for deliberate affronts, they were repeated in most brutal and offensive form; the only compensation that he received was free quarters at the Bastille and abundant opportunity, in the silence of solitary meditation, to nurse his hatred and to lick his wounds. The friend of Frederick II. never forgot the humiliation of his

early life, and the sharpness of both his pen and tongue may be traced in a measure to these days of wrong unavenged and unpunished. The Church was the ally and prop of the social scheme which permitted these wrongs, hence the Church must pay the penalty. His rage increased with his years, until he boasted, in the heat of his madness, that one man might destroy the religion which twelve men had founded.

But Montesquieu had no personal reasons for disliking either Church or State. No insult had embittered his early life, his unwounded pride never festered at the recollection of personal maltreatment. He was always decorous, conservative, and prudent. In the rich soil of his generous nature no seed had been sown from which hatred could grow. He was a lover of the human race, and sought to promote its happiness. If, in the effervescence of his early youth, he allowed his brilliant pen to enter upon dangerous fields of controversy, he never intended other than good results. He meant to cure, not to kill; he hoped to make, not to mar; he sought to repair and to improve, not to tear down and to destroy. His warm Gascon nature exulted in the mere fact of existence, the sunshine of the merry Gascon country was in itself a delight. He would have had the whole world as happy as himself. He loved the companionship of friends, he delighted in the society of books. He had never known one single sorrow in his life to resist the soothing influence of these silent and eloquent companions. They were part of his life; indeed, the best part, the only part by or through which we know him, the only part through which he survives.

Montesquieu became famous in a day. His *Persian Letters*, written when he was thirty years of age,

charmed, delighted, and irritated his countrymen, and especially his countrywomen, who were quite as ready and able as the male part of the population to make a writer's fame. The Persian visitors whom he invented, and whose comments upon the society and religion of France he gives to the public, were very free in their criticisms of what they saw, and it is not to be wondered at that the guardians of public morals looked with suspicion and alarm upon the trenchant wit of the Gascon sage, who dared to criticise abuses and to laugh at practices which time had rendered venerable. There was, indeed, much that might create grave concern in the minds of those who studied the letters of the Persian travellers. We must not forget that the roots and branches of State and Church were closely interwoven and intertwined. The blow aimed at the one was in effect a blow at the other. Time showed—and Voltaire lived to see the day—when the destruction of the existing State must needs bring with it a shock and disturbance to the Church. The result of the Letters was that the contagion spread which the conservatism of Montesquieu would fain have arrested and cured. He did not delay the current nor stem the rising tide. Perhaps by calling attention to abuses he aided in producing the calamity that he would have deprecated. He gave aid and comfort to the enemies of the social system that he would have willingly saved; finally, by making these attacks plausible, half a century after he was at rest, everything gave way that he would have preserved, and the foundations of the world were shaken.

Even when the Letters were at the full tide of success, many readers who were attached to the existing system of society looked with disfavor on their cold disregard

of respectable barnacles. D'Argenson said: "These are reflections which a brilliant man can easily make, but which a prudent man ought never to print." Marivaux expressed the class sentiment with accuracy when he said that a man should be sparing of his wit on such subjects. Montesquieu himself realized that he had become an object of suspicion to the "official classes," who sought every occasion to slight him, while they admired his ability—of which they thought he had too much. Indeed, it was darkly suggested that he was an infidel and possibly might be a traitor! These comments had their effect, so far as to induce him to disclaim the paternity of a work which it might not be quite safe to recognize as his offspring.

The sale of the *Persian Letters* was all that their author could wish. His Jesuit secretary, Père Desmolets, had confidently predicted the result: "The Letters will sell like bread," he had prophesied. And so they did. They expressed, in delightful speech, the thoughts of many who were neither able nor daring enough in fitting phrase to attack the powers of the day. As for himself, his reputation was, from that moment, established as a wit. He was *un homme d'esprit*. Perhaps he was surprised at the success that he had achieved, possibly a little alarmed at the construction that had been put upon the criticism of his Persians. He had never desired to be looked upon as an iconoclast. As he afterwards says: "I am not a theologian; I am a historian." If he used the knife, it was rather as a kindly surgeon than as a wilful shedder of blood. He took no delight in angry controversy. "Men forget," he said, "that when I represent a Turk I must make him talk and act and write like a Turk." The trouble is that his Turks

talk too much like Parisians and not enough like genuine Turks. Their real nationality is but ill disguised by their flowing robes, and the laughing face of the Bordeaux wine-grower is seen through their foreign mask.

The *Causes of the Greatness and Decline of the Romans*, next issued from Montesquieu's pen, would have assured his fame had the *Spirit of Laws* not belittled it by its own superiority. His treatise on the Romans is marked by the same perseverance and research as his book on the laws. He delves at the roots of history to learn how from general causes events have grown. He is no believer in chance; there is a philosophy of history with its rules and principles, and they must be studied and found before we can know the nature and reason of things. "It is not chance that rules the world," he says; "witness the Romans, who had a constant succession of triumphs while they managed their government on a certain plan, and an uninterrupted series of reverses when it was conducted on another. There are general causes, either moral or physical, at work in every monarchy, exalting, maintaining, or overcoming it." Upon this theory, he has examined symptoms to ascertain causes, and has, with a beauty of style that well became the dignity of his subject, first taught men that the records of the past might be found to contain sermons as well as traditions, lessons as well as facts, and materials for prophecy mingled with the dust of ages.

When the *Spirit of Laws* appeared, the work upon which his title to the admiration of posterity must depend, he was well known to the literary world as the author of the *Persian Letters*, but it is not clear that he was much helped by the celebrity thus acquired.

If there is one reproach in the arsenal of Gallic denunciation from which a man seldom recovers who aspires to instruct his people, it is the suggestion that he is not a serious man (*un homme sérieux*), and many thought, no doubt, that the putative father of these disrespectful Persians was too witty to be serious. How could he write a grave and instructive book and at the same time masquerade in Persian silks to the tune of Parisian music! The professor's gravity did not sufficiently appear, to entitle the aspiring pedagogue to a diploma.

Although the success of the *Spirit of Laws* was not immediate in France, it was not long in doubt. In England, intelligent opinion immediately seized upon the work, and received it with enthusiasm. This was due in a great measure to the fact that the author had been a close student and admirer of the British Constitution, and had adopted the shortest road to the British heart by the intelligent tribute to the superiority of that vague, shadowy, and unwritten charter of British liberty.

The practical genius of the English mind was happily shown on this occasion. The trans-channel admirers of Montesquieu must needs know something about this meridional wise man, who had studied, assimilated, and understood and expounded the constitution of England as intelligently and satisfactorily as though he had opened his eyes to the light at London or Liverpool. Inquiry into his residence and occupation naturally developed the fact that the expounder was not only a book-writer but a wine-grower, whereupon a British logic suggested that the man who wrote so excellent a book must also grow excellent wine. The orders for the wine grown at La Brede flowed in

as rapidly as the orders for copies of the *Spirit of Laws*, so that Montesquieu's frugal mind rejoiced at this double success, which delighted his pride and filled his purse. "The success of my book in that country," he said, "contributed to the success of my wine; but I think that the success of my wine has done still more for the success of my book." Whether this estimate was based on an overestimate of the bouquet of the wine or an underestimate of the greatness of the book, we have no means of ascertaining. The fame of the La Brede brand rests wholly on tradition.

It may not be without interest here to note that Montesquieu, though frugal and modest in his personal expenditures, was at heart generous and kind. He was a ready giver, but he concealed his charities as though they were grievous sins. Ostentation was abhorrent to his nature. His simplicity of life was such as to suggest avarice, whereas it was only indifference to display. He was quite conscious that he did not live and dress and shine like the gaudy members of his own circle, and felt that love of money for its own sake would be charged against him. But he repudiated the reproach. "I have never made any display in the way of expense," he said, "but I have never been avaricious. I know of no task, however easy of performance, that I would have performed to earn money. I have, I think, increased my store, but it was rather because I flattered myself that I thereby showed a certain kind of ability, than from any desire to become rich." He could not remember to have spent four louis for show, but many a gold piece quietly left his purse to relieve a needy applicant.

One instance may be cited. An English watch-maker once wrote him: "I think of hanging myself;

but I believe I would not do it if I had one hundred crowns." To which Montesquieu immediately replied: "I send you one hundred crowns; do not hang yourself, my dear Sully, but come to see me." How many English clockmakers he thus saved from voluntary strangulation we do not know; he was the last man to record the number of those or of others whom he rescued from despair.

That Montesquieu did think highly of his masterpiece we know from his own expressions. He exulted with a schoolboy's delight at the completion of his task, and as his weary pen traced the last words of his immortal work, his memory recalled the tempest-tossed companions of Æneas as they touched the shores of the promised land. "*Italiam, Italiam!*" he exclaimed. The joy of triumph and the hope of repose combined to make this the happiest moment of his life. The long labor of twenty years was ended, and the prize of endless fame secured. Like the Augustan poet, he felt sure that he would not wholly die, for he had erected a monument more enduring than brass. But the labor and anxiety were almost more than he could bear. As he revised his last proofs, he said: "This work has well-nigh killed me; I am going to rest. I shall labor no more." He lived eight years longer, but made no effort to add to his fame or to his claims upon the world.

It is curious to note how Montesquieu was at first alone of his immediate circle to realize and adequately measure the value of the *Spirit of Laws*. Whether the long and faithful labor of years had satisfied him that he could not have thus striven in vain, or the equipoise of his trained mind allowed him to judge as correctly as though he were passing on the performance of a

stranger, he knew from the outset that the book would win him renown. He called his intimates and asked for their opinion. The critic who showed the most favor kindly declared that there was enough in the work to make it valuable as a note-book from which material might be drawn for another treatise. The sternest and possibly the most candid of the critics bluntly declared that the best plan would be to throw the manuscript into the fire as the safest method of guarding the author's reputation from the injury which it would receive from publication. But he trusted to his own judgment rather than to theirs. Undismayed and undisturbed by his comforters, he quietly sent his work to the printer, and awaited the result without anxiety.

If the *Spirit of Laws* escaped the blazing logs of the château, thanks to the self-confidence of the author, another work of his was less fortunate. He had written a history of Louis XI., one of the most extraordinary and complex characters in the records of the French monarchy. Mr. Watson, in his *Story of France*, says of Louis XI. that he was "a great king, a thoroughly bad man, and utterly unscrupulous in method, yet his life-work was upon the whole a benefit to mankind. He was crafty, deceitful, cruel, and calculating." Perhaps a man may be a great king even if his character is made up of such ingredients. But as he did exhibit them in his life, it is not to be wondered at if historians, with one accord—still according to Mr. Watson—"decry him as a beast unclean." The estimate of a French historian of modern times probably comes nearer the truth. He says that Louis XI. was not a great king nor a good king, but still a king! Our curiosity to know what so competent a judge as

Montesquieu would have held upon this point will never be gratified. The carelessness of the secretary, who threw into the flames the complete and priceless manuscript, has inflicted a permanent injury upon mankind. Our regret is only heightened by the few samples that we have of the work that the world has lost. Who but Montesquieu could have described Richelieu in fewer words and have given a more accurate photograph of this towering figure of French history?—"Richelieu made his king play the second part in the monarchy and the first in Europe; he degraded the sovereign, but he ennobled the throne."

The necessary limits of this paper will not permit even a brief attempt at analyzing the *Spirit of Laws*. D'Alembert has made the effort, and has written many and dreary pages to show what Montesquieu intended to accomplish. But no author is more difficult to condense than Montesquieu. He is a dealer in epigrams, and possessed the talent to a rare degree of squeezing the sap out of an idea and of crystallizing it into apt and pungent words. So marked is this faculty in him that one of his contemporaries, Buffon, who did not err in the same direction, accounted for this conciseness by saying that it was due to the author's defective vision. His eyes had failed many years before his death, and he was obliged to dictate to his daughter, who performed for him the same pious office that Milton's children performed for their father. As his memory was bad, says Buffon, he was obliged to formulate in his own mind brief sentences that he was able to carry while the dictation was made, and in this way he became accustomed to the form of expression which is predominant in his work. Buffon may be right, though this compensation to short-sighted men

is not usually given. If it were, the *Spirit of Laws* would not stand out as a shining example of a style that has never, in epigrammatic excellence at least, been surpassed.

The foundation of the work was the attempt to find those common principles and emotions which, operating upon men of every climate and degree of civilization, produce certain results. He was satisfied that those principles existed, and if found, would afford a scientific explanation of what without their aid would seem too chaotic and inexplicable. Or, to come nearer to his own language, he rejoiced to find in "the nature of things" the explanation of so many different laws and customs. He was often discouraged and dismayed at what he termed "the majesty of his subject." Time and again he flung away the unfinished page, and turned his back in despair upon his herculean task. But his courage and the philosophy of his temperament never yielded long to debilitating influences. He resumed his labors and continued them until he was able to say, like Correggio, "I, too, am a painter!"

Montesquieu has been spoken of, and was no doubt considered in his day by many, as a reformer. And yet the reforming spirit in him was so mild as to be almost innocuous. He did condemn the Inquisition—but who did not even then shrink in horror from that awful and mysterious tribunal? He advocated the abolition of torture—who would restore it to-day? He was supposed to be a champion of religious toleration, but went no farther in his anxiety to give the benefits of generous forbearance to dissenters than the restoration of the Edict of Nantes. Yet that edict gave no equality, only faint-hearted toleration, to the men who believed in the same religious doctrines once

held by the king who formulated the edict (assuming that Henry IV. ever entertained any fixed belief on religion). Montesquieu was not an advocate of what to-day we consider the elementary rights of conscience. He was willing that the Huguenots should be permitted, with definite restrictions, to practise their own religious rites, but he was not in favor of admitting new beliefs to disturb the state and complicate the machinery of political society. In other words, if he was in advance of his day in these matters, his conservatism so dominated his theories of reform that before the eighteenth century had ended he had long been outstripped in the race for toleration by the majority of his people.

The peculiarities of his style have been criticised, and affectation imputed with scant justice. His methods were certainly unusual; his brusque transitions, the sudden breaks in the continuity of an argument, the dramatic outburst taking the place of a formal conclusion, astonish the modern reader by their unaccustomed and unexpected appearance. But they fulfilled their object, for they captivated the attention as they stimulated the curiosity of the reader. He sought to be read not only by the scholars and purists of the day, but by the many brilliant if frivolous people who dabbled in letters and only dreaded one thing in a book—to wit, being bored. The deadly sin of a writer was to fail in making the attention of the reader a prisoner, willing or unwilling. The solid gold of learning and wisdom was not enough; the artist's skill must call attention to the value of the metal so that the taste might be charmed while the mind was satisfied. There must be for the reader of the day frequent halting-places where he might stop and get

his breath. He was not always able to keep his mind stretched on the rack of continuous attention; he must be allowed at times to turn a corner abruptly and catch a new view of men or things.

A few among the countless instances of Montesquieu's skill in cheating the sluggard and decoying the unwary will illustrate the novelty, the charm, and the effect produced by this accomplished artist. Who would not prefer an aphorism to a sermon, if the former conveyed all the instruction of the latter? As he himself has said: "It is not enough to make one read, he must be made to think." His chapter on the "Idea of Despotism" contains exactly three lines. Here it is:

CHAPTER XIII. (BOOK V).

Idea of Despotism

When the savages of Louisiana want fruit, they cut the tree at the root and pluck the fruit. This is despotic government.

His chapter on "Torture," of which he was a constant and earnest adversary, closes thus:

So many illustrious writers have denounced this practice that I dare not speak after them. I was going to say that it might be adapted to despotic governments, where everything that produces fear enters into the government policy; I was going to say that the slaves in Greece and Rome . . . But I hear the voice of nature crying out against me.

His definition of taxation has become classical, perhaps commonplace: "Each citizen contributes to the revenues of the state a portion of his property in order that his tenure of the rest may be secure."

His objection to severe punishment for trivial offences: "If we examine the cause of all defiance of the law, we shall see that it is to be found in the failure to punish crime, not in the moderation of the penalty."

He explains the unpopularity of the English by saying that their arrogance is such that even in peace "they seem to negotiate with none but enemies." But of course this was much more than one century ago.

The proper limit of conquest: "There is a *natural* limit to conquest, namely, *the power of assimilation*."

Of liberty he says: "Liberty consists in the ability to do what *one ought to desire* and not being forced to do what one ought *not* to desire."

Of poverty: "A man is not poor because he has nothing, but because he does not work."

To multiply extracts would swell a modest preface into a volume; the temptation to pursue so easy a task must be resisted.

The close of his life was marked by the same kindly and gentle philosophy that he had exhibited from the beginning. He appears to have been a devout and consistent Christian, although making but few professions and preferring to lock up in his own heart the sentiments that he entertained on the most important problems that can occupy the mind of man. He was not only a believer in, but a great admirer of, the morality of the Gospel. He declared that he could not share the humility of the atheists, but preferred to believe that his soul was immortal and that he himself was not perishable like the beasts of the field. When death was imminent, he looked it in the face without bravado and without fear. He performed the religious duties required by his Church with

decorous solemnity. His spiritual adviser said, as the end was approaching: "No man, better than you, sir, can realize the greatness of God." "No one," he replied, "knows better the littleness of man."

Much and lavish praise waited upon the *Spirit of Laws*, but the tribute paid by Voltaire during Montesquieu's own lifetime is the one which best expresses in fewest words the opinion of his admirers. It is all the more precious because Voltaire never loved him, and he himself was never reckoned among Voltaire's friends: "The human family had lost its title-deeds—Montesquieu found them and restored them to their owner."





X

IN MEMORIAM—HON. MORRISON R. WAITE

31 March, 1888

JUSTICE is the great concern of mankind, said Edmund Burke. A recognition of this truth brings us here together to-day to testify our reverence for our deceased and honored brother, for he represented in his person and in his office, more than any other man of our nation, that justice which, working the salvation of our people by regular and decorous methods of adjustment, is intolerant of "violence, oppression, and sword-law."

What greater homage to the majesty of justice and the supremacy of law does the history of any nation present than the spectacle of which this reunion is but a fractional part—a great nation of sixty millions following to his grave this plain citizen whose only title to distinction was, and is, that he faithfully performed the duties of his station. But that station is so exalted, so noble, that office signified so much, that when of its incumbent it may be truly said that he has worthily fulfilled his trust, all the honors paid are well earned, and the epitaph may be written in a line.

It was the privilege of our honored brother to form part of and preside over a court which is unique in the history of civilized nations. Those who fondly look

for something of divine inspiration in the written constitution that first moulded, directed, and welded together the members of this young and struggling republic, must find material for encouraging speculation in the few lines that created this tribunal. To its hands have been committed interests that never had been, and nowhere this day are, entrusted to the decision of plainly clad and unarmed men. Not only does this body possess the rare power to sit in judgment on legislators, the direct creation and mouth-piece of powerful communities, not only may these few judges by their fiat annul the most carefully contrived plans of lawmakers, and paralyze their action, but they may summon before their bar sovereign States—the municipal representations of organized millions—to hear the exposition of their duties, to be warned as to the limits of their power, to be instructed as to their rights and proper functions, to learn the part that they must perform in the family of States to which they belong. States rich, prosperous, and jealous of their sovereignty must bow in submission to a civilian's voice, and yield their preference, their pride, their jealousies, to the only power that they dare not defy. What a lesson, what a keen vision of the future and its growing needs, what a giant stride in the path of peace and law, the creation of this body teaches, exhibits, and illustrates! The struggling and tottering States of a century since have grown into three times their number, and into such wealth and power that comparisons and statistics can scarcely keep pace with the reality. The sixty millions of yesterday promise to be one hundred before this dying century has ripened into another; schemes of aggrandizement, of policy, of finance, of expansion, of

admission, of exclusion, rise, grow, clash, succeed, or fail, but all these millions feel and know that whatever peril may threaten our nation, whatever ills may fly from the scarcely opened box that contains the secrets of our future destinies, no fatal harm can befall us so long as that small body of men, sitting in that quiet court-room in the Capitol, retains its power and commands respect. The sovereign State that appears as a suitor before that court knows that it has abdicated the one power that men most sedulously guard, the power to redress fancied wrongs by prompt violence. The surrender of this right, more than aught else in our scheme of government, marks our Constitution as the wisest device that ever sprang from human minds. A fatal hour did come when the compact was broken and the voice of the law was drowned in the clamor of battle, but the day has gone by when mad rebellion against the law finds a friend or an advocate, and those who love their country may, like the Roman poet, as he touched upon a like passage in the history of his people, turn away and cry out that it grieves and shames us to think of scars and crime, and of brothers—and of altars overturned and dishonored.

Of such a court the departed judge was the honored chief. The chief magistrate of the nation, the statesmen and lawmakers, the judges and the bar, all joined to honor him and to mourn his departure from his accustomed places. The highest qualities of the true judge were his: the native integrity which had grown into the very life; the anxious desire to do right; the kindly heart that was ever ready to mitigate, never to aggravate, the harshness of the law; the unaffected exhibition of a genuine manhood, great enough to rely upon itself, too great to seek for tributes

of admiration or homage not fairly earned. Just, true, gentle, kindly, clear in thought and clear in speech, faithful in his intentions and useful in his life, he has earned the honor that we now pay him. He has deserved—and this crowns the glory of his life—to be named as one of an illustrious line of public servants. He may, as they have done, safely trust his memory to his people.





XI

FRANCE ¹

IT was once said, with little exaggeration, that when France had a cold in her head, the rest of Europe sneezed,—an epigrammatic tribute, I take it, to her genius, her power, and, perhaps, her restlessness: or rather to that overflowing activity of life that would not be restrained by narrow geographical or political limitations, but must look abroad for moral and sometimes physical conquests to satisfy the cravings of exuberant health. No disease could touch her that did not move the world to ready and sympathetic unrest. How could it be else? Was she not the mother of civilization, the queen of the arts, the champion of every great and generous cause? The tramp of her victorious armies had been heard with almost wearisome monotony on every battle-field of Europe from Charlemagne to Saint Louis; from Saint Louis to Louis XIV.; from Louis XIV. to Napoleon. What a record of heroism! what a catalogue of heroes! And as she pursued her career of moral and physical triumphs she effaced the traces of war with the same hand that smote; for she sowed the seed of a glorious

¹ Response to the Toast, "The President of the French Republic," at the dinner to Whitelaw Reid on his return from France, April 16, 1892.

democracy while her philosophers, scientists, and literary men prepared the way for the brotherhood of nations. Who can gainsay her title to the gratitude of mankind? I need not rehearse her claims nor produce her witnesses before an American tribunal. Her blood, her treasure, her sympathy—she spent all that she had to make American liberty her debtor. Your honored guest will tell you that the tenderness that she once lavished on America she has never taken back. Whether or not that love has been fully or constantly requited, whether in the dark hours of desolation, when she wept in sackcloth and ashes and refused to be comforted because her children were not; whether in the time of humiliation her brethren of America heard her voice and wiped her tears, why should we ask? *She* never did. Her trust and affection were always as of old. Whatever else she might question she could not doubt that those who honored Washington would mourn with the bereaved countrymen of Lafayette. She comforted her bruised heart, in sore defeat, by remembering the trials and sufferings that culminated in the common glory of Yorktown. So long as fortune could not obliterate the records of the past, the jewel of American love and sympathy must be hers forever. And then, while still weak from loss of blood and soiled with the dust of defeat, she raised the torch of Liberty, and, waving it that the world might be gladdened by its rays, she called America to witness that there was a new bond between the two nations. Thus did she consecrate the old allegiance by a gift embodying the glories and triumphs of the past, the union of the present, and the aspirations of the future.

The president of the French republic! What a

title, what an opportunity, what a burden! To direct the destinies of the nation that knew Richelieu and Henry IV., Louis XIV. and Napoleon; to be the foremost man in a nation of thirty-six million gallant people, to represent before the world her rights; to be responsible for the performance of her duties; to see that no detriment shall befall the young republic that has fallen heir to such priceless treasures! This is no light task. He must remain faithful to sacred memories and march to the music of a brilliant future. He must be the pioneer of the people in the emancipation of thought and the development of freedom. He will, if faithful to his trust and equal to its performance, justify great expectations and fulfil great prophecies. A heavy task, this, to fall on one man's shoulders! The republican president who lives in Paris, and the republican president who lives in Washington, with one hundred million people behind them, are the real representatives of the new civilization. To them is committed the standard of all that is best in modern progress.

The president of the French republic bears a name well fitted to commend him to his people's affections. In the battle for freedom that began a century ago the great Carnot was at his post and faithful to his duty. History reports his unflinching fidelity to republican principles as one of his claims to the gratitude of posterity, but history clothes him with a far stronger title to posthumous veneration. He was a republican, it is true, but, first and always, he was a patriot. The love of country was stronger than the love of party or the scruple of consistency. We, who have heard the echo of Washington's voice warning us against the destructive potency of party spirit as the danger most

likely to disrupt our union, may uncover in reverent homage to the Carnot of the French republic, the organizer of victory. It was the same Carnot who dropped and brushed aside his personal preferences to join hands in patriotic forgetfulness of self with the tottering Napoleon of 1814. For that Napoleon, whatever the blemishes upon his matchless genius, then incarnated in his person, though his star was on the wane, the traditions, the honor, the patriotism of France. It was no time for ponderous Senates to discuss nice questions of constitutional law, nor to dilate in sonorous periods upon the abstract blessings of civil liberty. The enemy were thundering at the gates, the soil was trodden and polluted by the invader, the grim warriors of Marengo, Austerlitz, and Moscow were doing their heroic duty, but melting away before the swarms of their united enemies. Then the patriot Carnot hastened to the side of the lion at bay, and urged his countrymen to forget all things except the insulted land of their fathers. "Ah, Carnot," said the emperor, "I have known you too late!" And yet, when he was the manufacturer of royalty and the master of a continent, he had said to this same Carnot: "You may have all that you want, as you want, and when you want." But the stern republican was not then bound to yield allegiance to the man who had brushed aside the republic. The hour came with the nation's humiliation, and he only proffered his service when it could not be rewarded. Well might the German Niebuhr, glowing with admiration at this heroic and patriotic citizen's deeds, declare: "If all that I had in the world were a crust of bread, I should be proud to share it with Carnot."

And now the grandson is the chief magistrate of the

nation that Napoleon ruled and covered with renown. Is he worthy of this conspicuous honor, and may we hope that his hands will hold up the dignity and prosperity of his people? The years of his probation have answered the question. It has been the rare good fortune of the republic to find among her citizens a man who knew how to fill this exalted part. Happy the people who possess the man required for their emergency! happier still the people who esteem him at his worth and honor him accordingly! Party differences are subdued and silent when he challenges judgment. The people know him and repel partisan criticism of their faithful servant. For such he is, and such they know him to be. No craving for a wider sphere of uncontrolled action, no selfish hope of personal aggrandizement, have ever marred his conduct or dimmed his fame. He has learned, perhaps from the traditions of his household, that the first citizen of France is simply the most honored servant of the people; that the duty of a president is to execute the laws, not to make them; that the function of his office is to enlighten the nation, not to endanger its peace or to destroy the liberties of his people. The president of the French republic is the pedagogue of Europe; his chair is a pulpit whence he is to teach that Liberty means light; that she carries the book and pen where she may, the sword only where she must; that his first duty is to teach obedience to the law by practising it; to accept, not to dictate; to be vigilant and true and honest and brave in his allegiance to the sovereign, for the law is his master, even when he reviews one hundred thousand men.

Truisms these things seem to us. A successor of President Washington who would dream of usurping

the power confided to his hands, and of placing himself above the laws, could hardly hope for anything more serious from an American audience than to be hissed off the stage. More probably a continent would shake with laughter, and a performance intended to be dramatic would end in burlesque. The American people are not without a sense of humor, though it is often inadequately expressed. There are springs in their intellectual make-up that may be touched with effect, and they would rise to all the requirements of a mirth-provoking situation if any citizen, whether in the White House or out of it, should act upon the theory that he was indispensable to the welfare of the nation. The savior of society has no place here. He is not classed among our vertebrate animals, and the popular diagnosis would at once recognize the presence of mental disease. Hellebore was the reputed cure in the old Roman days; the strait-jacket or mild confinement is the more modern method. But *we* have not ten millions of armed men in our close proximity, most of whom may, in the chances of diplomacy or accident, be our enemies to-morrow. The waves and fogs and storms of the Atlantic are the steady and inexpensive bulwarks to our main frontier, and as to other possible foes—but we have none.

Not so, however, in the old land of France. The man on horseback still lives in legend and tradition. He has done great things in days gone by, and may, perhaps, forget that he is no longer a factor in the peaceful destinies of the country. One thousand years of unremitting activity have surely earned the right to repose. Glory may have its uses, but glory palls in time upon the taste, and its music loses all charm for modern ears. France wants a leader who

will tap the boundless resources of her genius for the pursuits of peace. He must insist that she shall freely extend the new domain that she has chosen for herself. True, a shadow is still on the wall, and the day may come when her children shall be summoned again to try the cruel chances of war. But should the fated day come—which may Heaven avert!—she will remember that of her fathers, the Gauls, it was said by their Roman foes that they did not fear funerals. This is a sombre theme, and we all prefer to watch her growth in the field of her own selection, the arts and sciences and literature, that adorn and delight and bless our race.

Honor, then, to this, her chief magistrate! May he succeed in his mission of peace! The experiment of free government is being made by a nation under whose soil lie sleeping fifty generations of men. They were born and bred under a system that made one man better, by accident of birth, than all other men; what wonder if she has not, at one bound, mastered the excellences of a wholly different scheme! The habits of a nation may not be shaken off in a day. Nor, on the other hand, must we forget that democracy and republicanism are not convertible terms. France has been for a century the most democratic of nations. As one of our own great leaders of thought once said: "True democracy does not consist in saying, I am as good as you, but rather in saying, You are as good as I." She knows this lesson by heart. True republicanism consists in obeying equal laws with ready and cheerful alacrity. Why should not the young republic live up to this simple canon of republican conduct? Adversity has bowed the head of her people in humiliation and sorrow. It were idle to deny that old

wounds are not quite healed, or that retrospection is unmixed with bitterness. But the nation has turned its face to the light of a new dawn. Another generation is coming forward that will be slow to abandon the fruits of their fathers' trials, and will readily be taught that liberty is better than servitude; that it is better to be a citizen than a subject; that to serve one's country is better than to serve a king. We, of America, may be pardoned if we rejoice in that belief and exult in our possession. May we not hope that the old nation who was our friend when we sorely needed friends may join hands with us, not for selfish purposes and selfish aggrandizement, but for the benefit of the human race? Made up as we are of so composite a texture, representing every nation of the world, because each one contributed from its best citizens to our prosperity, we may truly say that nothing that interests mankind is foreign to us.

And in drinking the health of the honored president of the French republic we will, with grateful recollections and renewed affection, pledge the fair land that still lives in undiminished brilliancy to instruct and charm the world.





XII

FRANCE ¹

THE fact—or assumed fact—that the gentlemen for whose especial benefit and edification I am called upon to speak will probably not understand one word of what I shall say gives me renewed and cheerful confidence. Their traditional courtesy will enable them to stand the severest test of protracted addresses without betraying anything but ill-suppressed delight, while the tried courage of their race will not permit them to flee from occasions of hardship and peril. It is not, we all know, their practice to turn their backs on friend or foe.

I am pleased, too, that they shall not be able to treat my expressions of laudation and gratitude as strained and conventional expressions finding here a suitable stage for display, but let me tell them in all sincerity—and this, at least, I wish that they may understand—that hyperbole ceases to be itself when American citizens seek to express their grateful recollection of French aid, French sympathy, and French generosity. Our guests, as the benefactors, might think us extravagant of speech when we recall the dark days which their fathers turned into sunshine, but we who

¹ Address to the French Delegates, on presentation of the statue of "Liberty Enlightening the World," June, 1885.

have harvested and now enjoy the fruits of the seed sown by them would indeed be cold of heart if we measured the words that recalled their deeds in our behalf.

The splendid gift which these gentlemen have carried from their own soil to find a home in our bay is not the gift of a king or an emperor or any government whatever. It is not the fashion of political bodies to manifest international regard by costly presents. Many inconveniences might attend such a practice if adopted—not the least, perhaps, the necessity of reciprocity. Besides this, the lesson of the Trojan horse is not without its value. We may well hesitate to become the recipients of favors which might imply too much. But the spontaneous offering of a people,—and of the only people who stood the sponsors of the infant nation that needed help as no nation ever did before,—this may well be accepted as a symptom of the same affection that approved itself so long, so well, so often.

This bronze memento, out of which so many far-reaching guns might have been made, typifies and perpetuates the common aspirations of two great nations, and symbolizes the hope that not only they and their children shall see and live in the light of liberty's torch, but that all nations and all people shall be warmed and made happy by its rays. For the instinct and spirit of liberty is not one of caste, nor of sect, nor of narrow limitations. It embraces the universe with a bond of brotherhood that throws its girdle around the earth as the magnetic wire that daily draws the nations into closer and more fraternal contact. But for this broad and all-embracing charity the voice of suffering America would never have reached

the heart of France, and Freedom's knight-errants would never have ventured their all in a quarrel not their own.

As their pioneer Lafayette described it: "As soon as I heard of American independence my heart was enlisted."

This was the sentiment of that brilliant and gallant Court which was soon to be scattered, ruined, and destroyed. Even the kind-hearted king shared the common madness, for in him and in them it was a sublime folly that only hastened the impending and fatal doom. There was much truth in the comment of one of the members of the royal family, that Louis XVI. signed his death-warrant the day that he signed a treaty with the United States. But be this as it may, the cause of American independence must have exercised a strange fascination on the hearts of men, especially of that gifted people—when royalty herself paused to listen to the charmed accents of the *Circe* Liberty on the very verge of destruction.

An occasion like the present is peculiarly fitting for a retrospective view of our relations with the people who now come to us with a new link to add to the old chain. We are, and pride ourselves on being, a practical people—not given to sentiment, slow to emotional acts, governed by reason, and apt to sneer at the ostentatious display of Latin effervescence. In point of fact, I take it that no people are more susceptible to these very influences than our people—none more ready to act on prompt impulses, none better able to act in harmony with genuine sentiment that strikes a corresponding chord in their breast. And if no people other than the French would or could have designed and carried out without public patronage or public moneys this

sentimental idea of perpetuating in imperishable bronze the common glory of two great nations—none I think, could more readily respond to such a suggestion than our own.

I have said that this was a popular, not a political offering. The report of the original committee shows how earnest the promoters of this great scheme were that its true character should not be misunderstood. They spoke in the name of 181 towns, all of them represented by their municipal authorities; of forty general councils of departments, of ten chambers of commerce, and of one hundred thousand individual subscribers. Were they not right when they said, "The people of the United States will understand the feeling which has inspired this great manifestation"? And we on our side can show that the popular pulse did respond; one single newspaper of New York enlisted upwards of seventy thousand subscribers to co-operate in the work. We, too, will soon have our one hundred thousand stockholders in this great enterprise which will pay its dividends, let us hope, for ages to come, to all who give this cause their sympathy.

It may perhaps be suggested that the fact that France lavished her favors on the American people in the past does not explain her present action. Logically—the objector may say—America should send bronze statues to France, not France to America. We never sent armed men to her aid when all Europe was banded against her. While her land was overrun, and German, Russian, English armies swept over her fields and towns, leaving a track of ruin behind them, only French blood was shed in her behalf. Our ships did not go down with French ships at Trafalgar—our treasure did not melt away in the fiery furnace of

French tribulation and German triumph. If we are paying taxes to support our credit and diminish our debt, no part of that debt was incurred to save French interests or French territory. True—but he knows little of the hidden springs that control human action who does not know that there is no gratitude like that which is felt by the benefactor. It is far easier to forget the favors that we have received than those that we have conferred. That pattern of shrewd worldly wisdom, Benjamin Franklin, ingenuously tells us that when he wanted to secure the good will of influential men, he always sought to place himself under some slight obligation: he borrowed (and returned) a book, or asked some small service. The obligation incurred was never heavy enough to trouble *him*, but it always encouraged the other party to renewed bounty. The habit of generosity is apt to grow with exercise, and it is precisely because France was the friend and loyal ally of America upwards of a century ago, that she is now ready, and always has been, to testify the warmth and fidelity of her attachment. And if there ever has been at any time, on the face of our friendship, coldness or estrangement, or the appearance of it, such a change has never been exhibited by France. At all times, under all circumstances, whether we were prosperous or depressed, at peace or at war, her sentiments have never varied, and her citizens, even those most devotedly attached to their own country, never deemed it heresy to that country if they knelt and worshipped at the shrine of American independence. Jealous as France has been of the undivided allegiance of her people, she has never prohibited this devotion to another divinity. In our civil war the popular sentiment was as true as the magnetic needle to the

north star, and men of royal blood did not hesitate to don American uniforms and risk their lives on battlefields long familiar to their own citizens. We are now great enough in population and wealth and influence to fear no nation of the world, but tho' we may have no further need of it, we may rest assured that the same sentiment is still deeply imbedded in the French heart. No evil can touch us that will not leave a scar in France. If she was ready to take upon herself such enormous burdens, to encounter such risks for an abstract cause, before one century's friendship had cemented the two nations into unity of views and aspirations on so many subjects, how must it be now? That the feeling has not grown cold and that the ancient nation has preserved the old tradition let this monument forever testify.

But it is not only as a memento of common efforts ending in a common triumph that this monument is to stand. Even without this or any other palpable evidence to bring back the past, we have in history and in tradition monuments more enduring than brass. We must forget the birth of American independence, and strike out all the record of its cost in blood and treasure and hardship, before the memory of these things can fade away. Those were no light trials that could shake the soul of George Washington—those were no small perils that could make him doubt the final success of his and his country's cause. If I were called upon to pick out from the mass of concurring testimony proof of the priceless value of French aid to the American colonies, I should go to that dark and dreary winter at Valley Forge, when even the stoutest hearts were despondent. All that makes victory possible was absent except courage and

faith, and they were fast failing before the cruel blows of adverse fortune. What must other men have thought of the future and its promises, when Washington, from the midst of his shivering, half-clad, and half-fed followers, wrote this: "Unless some great and capital change takes place the army must be inevitably reduced to one or other of three things,—starve, dissolve, or disperse"?

Only a miracle could save the cause! Who would help the struggling band of enthusiasts that had nothing to offer as a reward for the aid which they prayed for? Was it not against all history and experience that the vanquished cause should so commend itself to the world that troops, and money, and friends, and sympathy from strangers—strangers in blood, in tastes, in language—should be provided as though a rich return were sure to follow? It all came, and, strangely enough, the prime mover in the battle against monarchy was a king, the volunteers in the *people's* fight were nobles, the treasury that made success possible came from a well-nigh bankrupt state! If logic had had a voice in French councils, and French sentiment had not guided French action, Lafayette would have stayed at home, Louis XVI. would have closed his royal ear to these earnest appeals, French gold would have remained in French hands, and the galaxy of bright, brave, loyal, chivalrous marquises, dukes, and counts would never have fought, flirted, suffered, danced, and—died on American soil. And what people other than they would have ignored the common-sense view of the case? I have my misgivings that even now, when we look at it quietly, we are inclined to shake our heads with retrospective wisdom, and while admitting that once

in a while such things may be done, yet they are not to be repeated, and our people should be warned against so dangerous an example. Let each nation fight out its own destiny, and work out its own will. The path before us is clear: strict neutrality and our best wishes for the right. But France, to her great cost, has not, or had not then, been taught the lesson. The American colonies have not been alone to incur a debt to France, which no coin can repay, for it has always been her effort "to hitch her wagon to a star"! The world has profited, even if she has lost.

I repeat, then, that there is something besides a memento in this. There is a lesson for all of us, one that may be read by the thousands who shall first set their eyes upon this our statue. It will typify the part which liberty, with wise limitations, is learning to play in the world. This torch, whose radiant light will glorify our bay, will represent the real light of liberty as it relieves mankind from the darkness of uncontrolled authority. Liberty is to the political world as the sunshine and the air are to the sickroom, the hospital, the abodes of physical and moral wretchedness and misery. How many problems in the hygiene of politics as of science, light and liberty will solve! Let the light in upon all subjects, upon and into the nooks, and corners, and byways of the world. The scourge and the executioner are but poor guides and poor physicians for the great and suffering masses. Let the light of a free press and free speech pour its radiance into the dark recesses never reached by such agencies before. Teach men before you punish them—enlighten them as to their duties while you point out their rights—show the world, as we are trying to do, that the only panacea for the ills that human

society has been groaning under and fighting against during all these centuries is Liberty—Liberty, the friend of morality, of virtue, of truth, of honor, of learning—Liberty, the foe of oppression, of violence, of murder, of cowardice—Liberty, which takes nothing from man and gives him all, even a remedy for the ills which a constantly changing and restless society will ever generate. This let us all hope. And if our great statue will preach this lesson for ages to come in our own peerless bay, we will bless it and love it for the givers' sake and for its own!



MORALS AND SOCIAL PROBLEMS



XIII

LE DIVORCE

RÉPONSE À M. DUMAS.

"Quelques auteurs traitent la morale comme on traite la nouvelle architecture, où l'on cherche avant toutes choses la commodité."—VAUVENARGUES

ALEXANDRE DUMAS FILS.

Monsieur :

VOUS êtes un homme de beaucoup d'esprit.

Pardonnez-moi cette façon un peu brusque de vous présenter l'encensoir, mais je suis pressé, car j'ai beaucoup de choses à vous dire. Si je parlais de M. Dumas fils à tout autre qu'à vous même, l'observation que je fais en débutant, serait fort inutile, sinon ridicule. Mon interlocuteur, pourvu qu'il sût lire, hausserait les épaules et me demanderait si je me moque de lui. Vous êtes donc le seul auquel je puisse m'adresser de la sorte, parcequ'il est possible que vous soyez ignorant du fait, patent pour le reste du monde, que vous êtes doué de beaucoup d'esprit. Je soupçonne bien que le Diable dont vous vous vantez de posséder l'amitié, a dû vous dire cela et d'autres choses encore, mais peut-être ne l'avez vous pas cru. Dans ce cas, soyez complètement rassuré; personne ne doute que vous ne soyez un des hommes les plus spirituels de la France, et par suite, de l'univers.

Si je vous parlais d'un autre que de vous même, vous me demanderiez sans doute où je puise mon autorité et qui m'a fait juge en pareille matière. Mais vous ne me ferez pas cette question, car je parle de vous, et l'homme, pour son esprit, est un peu comme la femme pour sa beauté. La louange n'a pas besoin de pièces à l'appui; le jugement de Pâris n'a pas besoin de considérants.

Je viens de lire votre livre sur le divorce. Je ne prétendrai pas qu'en entreprenant la lecture de cet ouvrage, j'aie été attiré par le titre, ni que le sujet possédât pour moi un attrait particulier; c'est simplement parceque ces pages étaient signées de vous et que depuis bien des années j'ai contracté l'habitude de vous lire. Je ne m'en fais pas gloire, tant s'en faut, et vos francs aveux de la part qu'a eu le Diable dans la production de vos œuvres me fait soupçonner que j'aurais peut-être mieux employé mon temps à autre chose. Mais vous avez une façon à vous d'éblouir les gens et quand votre "Diable" paraît en scène, ce qui par parenthèse n'est pas rare, il est mis avec tant de goût, il est si joli garçon, si parfumé, il s'exprime avec tant d'élégance, que l'on ne voit plus ses doigts crochus ni ses pieds fourchus; l'odeur de soufre que tout diable qui se respecte doit exhaler, est déguisée d'une façon dont vous possédez seul le secret. Pourquoi donc êtes-vous venu avec une franchise quelque peu brutale, nous ravir nos illusions, en nous le montrant sans ce joli appareil qui lui seyait si bien?

Vous avez donc écrit un livre sur le divorce. Je l'ai lu d'un bout à l'autre et je me suis demandé, je me demande encore pourquoi vous vous êtes lancé dans cette singulière aventure.

Il m'est venu à la mémoire, après lecture de votre nouvel ouvrage, une vieille histoire: Le révérend Sydney Smith, l'homme le plus spirituel d'Angleterre, excepté Macaulay, et M. Macaulay l'homme le plus spirituel d'Angleterre, excepté le révérend Sydney Smith, se trouvaient ensemble chez un lord de leurs amis où ils passèrent huit jours, durant lesquels M. Macaulay ne tarit pas un instant. Sa verve inépuisable coulait à flots si pressés et si rapides que, sauf les rares instants où il s'arrêtait pour cracher ou pour tousser, le révérend dut se borner au rôle ingrat de simple écouteur. M. Macaulay, sa visite finie, était déjà en voiture pour partir, lorsque le ministre s'élance à la portière lui criant à tue-tête: "Je l'admets, je l'admets." Quoi donc, qu'admettez vous? "Mais, que vous parlez mieux qu'aucun homme en Angleterre." Il ne nous fallait pas, monsieur, votre nouvelle brochure, pour nous convaincre de votre talent et nous étions prêts à vous crier, chacun et tous en chœur: "Je l'admets."

Peut être aussi avez-vous voulu nous prouver que vous avez lu la Bible; car quelques uns de vos anciens lecteurs ont pu croire que l'étude des Saints-Evangiles n'a pas figuré pour une forte part dans votre éducation.

Peut-être dormiez vous avec un discours de M. Ferry ou de M. Naquet sous l'oreiller, et, contrairement à l'effet généralement produit en pareil cas, l'éloquence de ces messieurs vous ravissait le sommeil. Enfin, quelque soit le motif, vous avez voulu rompre une lance contre la vieille Eglise, et prouver qu'elle n'entendait rien au métier qu'elle pratique depuis tant de siècles. Vous devez être content; c'est vous maintenant qui attirez les regards de la foule—les autres

acteurs n'ont plus qu'à sauvegarder la dignité de leur silence.

Comme théologien, Monsieur, permettez-moi sans offense de vous le dire, vous réussissez médiocrement; c'est du reste, je m'empresse d'ajouter, un titre rarement mérité que celui de théologien. Ce grand et éminent prélat, le Cardinal Newman, a dit récemment qu'il n'y avait au monde qu'un ou deux véritables théologiens, dignes de ce nom. La vérité me force d'ajouter que votre livre n'avait pas alors paru, mais, eût-il vu le jour à cette époque, Monseigneur Newman n'aurait pas modifié son avis, et vous aurez beau citer la Bible et jeter à l'Eglise toutes les turpitudes que vous avez pu trouver dans les brochures du jour, vous ne passerez jamais pour Saint Thomas d'Aquin. Il faut des études bien autres que les vôtres, pour éclairer, Monsieur, l'obscurité du tombeau et pour montrer à l'homme la voie qu'il doit suivre pour arriver au but final. Il ne suffit pas d'avoir embelli le théâtre des plus charmantes immoralités, pour oser prêcher sur des textes qui ont divisé les hommes depuis des siècles. L'on peut avoir écrit "La Dame aux Camélias" sans connaître pour cela les secrets que Dieu a placés sous sa parole divine et, peut-être même, avoir un *diable* pour guide et ne pas en savoir autant qu'un moutard de dix ans qui a étudié son catéchisme. Non, Monsieur, croyez-moi, vous n'êtes pas plus théologien que—que moi! et le bonnet de docteur dont vous vous affublez, sans rime ni raison, cache seulement les jolies couronnes de fleurs que vous ont tressées les doigts roses de vos héroïnes—héroïnes séduisantes, quoique bien légères!

Il est vrai que vous êtes moraliste, du moins je me le suis laissé dire. Entre la morale et la théologie il

ne doit y avoir qu'un pas, mais ce pas est bien difficile à franchir! St. Denis a pu perdre la tête et cependant faire le premier pas dont la difficulté est devenue proverbiale; mais si vous perdiez la tête—au figuré je l'entends bien—vous ne réussiriez peut-être pas comme lui. Je vous accorde le titre de moraliste sans difficulté. Au surplus, je ne sais trop ce que cela veut dire aujourd'hui. Autrefois ce mot impliquait quelque chose de grave, de studieux, de pensif. L'on entrevoyait l'ombre de Pascal, de Montaigne, de La Bruyère—mais, de nos jours, nous n'aimons pas à évoquer les spectres d'un ordre sérieux. Le moraliste contemporain a peu de choses en commun avec ceux qui portaient autrefois ce nom. Il peut mériter ce titre pour avoir examiné de près le vice moderne, pour avoir réhabilité l'immoralité, et pour avoir porté le paradoxe au dernier point de l'élégance littéraire. Je ne sais si vous êtes moraliste pour avoir découvert la "Dame aux Camélias," ou pour avoir permis au mari outragé de tuer sa femme infidèle. Mais enfin, vous en avez le titre et vous avez peut-être voulu prouver que vous y aviez droit. Vous avez réussi; ainsi n'en parlons plus.

Comme je ne possède pas le moindre fonds de science théologique et que vous avez dû épuiser le livre de M. le Docteur Drouet, je n'entrerai pas dans une discussion qui n'aboutirait qu'à démontrer mon ignorance—ignorance que j'admets de la meilleure foi du monde—mais la question ne me semble pas appartenir à cet ordre d'idées, au moins exclusivement, et je me propose de chercher si, dans vos arguments principaux, vous n'êtes pas tombé dans quelques erreurs qu'il peut être utile de relever.

Vous êtes trop sagace pour avoir pensé que les

catholiques allaient devenir partisans du divorce pour avoir lu votre livre. Vous savez comme moi que sur ces questions ils acceptent sans réserve l'enseignement de l'Eglise et qu'ils ne canoniseront pas M. Naquet, même si vous leur prouvez que Charlemagne s'est marié aussi souvent qu'Henri VIII. Ils vous répondraient que c'est fort possible: ils admettraient même que l'on a pu dissoudre des mariages au Moyen Age avec une facilité qui peut paraître extrême quand vous nous la signalez. Mais ils vous diront aussi que cette même ardeur à rechercher des causes de nullité démontre surabondamment le principe d'indissolubilité. En effet, si le divorce était chose si simple, pourquoi ne pas l'accorder *a priori*, sans chercher des prétextes futiles; pourquoi ne pas permettre à Henri VIII. de quitter Catherine pour Anne et, prenant ce monarque susceptible par le côté faible—sinon par le bon côté—pourquoi ne pas avoir conservé la vieille Angleterre dans le giron de l'Eglise? Certes le peuple anglais ne demandait pas mieux que de garder la tradition de ses pères: il ne se doutait pas qu'il gagnerait en moralité parce qu'il aurait Henri VIII., Elizabeth, George IV., ou Victoria pour pape au lieu de Clément VII., Sixte Quint, Pie IX., ou Léon XIII.

Vos citations bibliques, monsieur, sont très intéressantes. Vous les faites surtout avec une certaine candeur qui est presque touchante. Vous êtes un peu sous ce rapport, comme Madame de Staël qui, lorsqu'elle parlait de vertu, semblait croire qu'elle avait fait une découverte. C'est au moins ce que disait Napoléon.

L'histoire d'Abraham, de Sara, de Rachel, de Lea, mais, tout cela, c'est très connu—non pas parmi les enfants catholiques—j'admets que les parents ne tien-

nent pas à les moraliser par la lecture de ces exemples de mœurs patriarcales ; mais vous n'avez pas écrit pour les enfants catholiques. Pour les protestants, vous ne leur enseignez pas grand chose sur la Bible, puisque c'est la base de leur édifice religieux. Je crois même qu'ils vous sauraient assez mauvais gré de traiter si légèrement le livre qu'ils vénèrent à si juste titre. Si c'est pour éclairer M. l'abbé Vidieu, je n'ai rien à dire, mais je ne pense pas qu'il ait oublié ces histoires bibliques lorsqu'il a parlé de la sainteté du mariage. Au reste, c'est là une affaire entre vous et lui, dont je n'ai pas la prétention de me mêler.

Mais laissant là Abraham et Jacob, revenons à une époque plus rapprochée. Cette époque nous importe quelque peu, puisque c'est principalement de l'Eglise Catholique qu'il s'agit, et voyons ce que vous avez à dire sur les usages anciens de la France.

Il est certain que, du temps de vos premiers rois, l'on enjambait assez lestement les barrières de la morale. La royauté en France n'a pas été plus remarquable pour la pureté de ses mœurs que chez les autres nations de l'Europe. Le pouvoir absolu n'a pas une tendance bien moralisatrice, et si vous ajoutez à cela l'influence des mœurs rudes, cruelles, brutales—vous ne devez pas être surpris de trouver que vos premiers souverains n'étaient pas précisément des modèles de chasteté, ni même de les voir se marier et remarier sans prendre le temps ou la précaution de décapiter les épouses gênantes, comme faisait le père de la Réforme anglaise, et (suivant vous) l'auteur du système du divorce en Angleterre. Je soupçonne qu'ils prenaient leurs femmes un peu comme le château qui leur plaisait, parcequ'ils s'appelaient "Lion." Ils ne devaient pas être forts sur la loi canonique, ni sur

le droit romain, ni sur bien des choses que vous devez connaître à fond. Mais à cette époque—il faut vous le rappeler—M. Ferry n'était pas ministre de l'instruction publique.

Enfin, il leur est arrivé de changer de femmes, sans beaucoup de phrases, et de ne pas attacher aux cérémonies du mariage une valeur exagérée—c'est avéré. Mais, lorsque vous nous dites que Childéric, Caribert, Audovert, Bazine et Charlemagne ont commis ces infractions aux lois de l'Eglise et que vous induisez de là que l'Eglise autorisait ces mutations matrimoniales, vous m'étonnez.

Je cherche autour de moi, et je trouve Monsieur Merlin, dont je trouble assez rarement le sommeil—mais qui cette fois invite mon attention. Il avait entendu parler de ces rois volages et de leurs méthodes irrégulières—il savait aussi quelque chose sur la loi de l'Eglise qui, de fait, entrait dans le domaine de la jurisprudence française.

Dans les premiers siècles de la monarchie française [dit-il] le divorce a été admis parmi nous; on en trouve plusieurs exemples sous nos rois de la première et de la seconde races: l'histoire nous apprend en effet que Bizine ou Bazine quitta le roi de Thuringe pour suivre Childéric, qui l'épousa. Cherebert, roi de Paris, répudia sa femme légitime. Audovert, première femme légitime de Childéric, roi de Soissons, fut chassée, parce qu'elle avait tenu son propre enfant sur les fonts du baptême. Charlemagne répudia sa première femme, parce qu'elle n'était pas chrétienne.

On trouve aussi dans le droit canon le terme, Divorce, mais il n'y est employé que pour exprimer la séparation de corps et de biens qui n'emporte point la dissolution du mariage: *Car jamais l'Eglise n'a approuvé le divorce pro-*

prement dit; elle l'a toujours regardé comme contraire au précepte "Quod Deus conjunxit, homo non separet."

C'est donc une maxime constante parmi nous que le mariage ne peut être dissous par la voie du divorce; cependant on peut attaquer un mariage de nullité par la voie d'appel comme d'abus; mais dans ce cas, le mariage n'est point dissous; on déclare seulement qu'il n'y en a point eu de valablement contracté.

Ces quelques lignes de Merlin me semblent bien claires. Il affirme très positivement ce dont vous doutez et n'est nullement embarrassé de distinguer entre un divorce "proprement dit" et une séparation. Notez aussi qu'il était parfaitement au courant des irrégularités domestiques de Charlemagne, Childéric et autres—mais malgré cela il vous donne la *maxime constante* basée sur le principe que l'homme ne doit pas désunir ce que Dieu a uni.

Si cela ne vous ennuie pas trop, voyez maintenant ce que dit Pothier. C'est un auteur fort estimé, comme vous le saurez si vous voulez vous renseigner sur son compte. Il ne se gêne pas non plus pour dire leur fait aux théologiens qui voudraient empiéter sur les droits de l'Etat.

"Quoique le divorce soit condamné par l'Evangile, les empereurs chrétiens, par des raisons d'état politiques, ne l'avaient pas aboli, et ils s'étaient bornés à en restreindre la liberté." Il cite à l'appui de son dire une foule de textes, fort intéressants sans doute, mais que ni vous ni moi ne nous soucions de vérifier. Il poursuit:

Quoique le divorce fût permis alors par les lois séculières et qu'en conséquence, après un divorce célébré dans la forme légale, chacune des parties pût, dans le *for extérieur*, passer, du vivant de l'autre, à un autre mariage,

néanmoins *l'Eglise regardait le divorce comme défendu par l'Evangile et comme incapable de rompre le lien du mariage*; en conséquence, elle regardait comme un adultère, plutôt que comme un mariage, celui que l'une des parties contractait, après le divorce, du vivant de son conjoint, avec une autre personne: et quoiqu'il fût réputé valable dans le for extérieur, elle retranchait de la communion les parties qui l'avaient contracté, jusqu'à ce qu'elles se séparassent, et elle les soumettait à la pénitence à laquelle étaient assujettis par les canons les adultères.

L'auteur cite St. Ambroise sur Saint Luc, Lib. 8, No. 5, puis encore le pape Innocent I., dans la lettre décrétale à Exupère, etc. Puis il ajoute en forme de conclusion: "*Remarquez que, quoique ces mariages fussent alors permis par la loi civile et dans le for extérieur, le pape veut que ceux qui les contractent soient retranchés de la communion des fidèles.*"

Cette distinction entre le *for extérieur* et le *for intérieur* vous semble peut-être subtile, et si vous vous occupiez des lois sur l'enseignement supérieur vous l'attribueriez sans doute aux machinations des Jésuites. Mais il n'en est rien. Cette subtilité apparente découle de la nature même du mariage.

Il y a là en effet une particularité qu'il convient de noter pour éviter certaines confusions dans lesquelles il me semble que vous êtes tombé.

Le mariage diffère de tous les autres contrats, en ce qu'il est tout à la fois un contrat civil et un sacrement. Je me sers du présent quand je devrais peut-être me servir du passé; mais comme le double caractère existe toujours pour les catholiques et bon nombre de protestants, nous pourrons en parler sans nous préoccuper de la simplification que va introduire la loi Naquet dans les affaires de ce genre. Or, comme con-

trat civil, il appartient à l'Etat de le définir, de l'entourer de sauvegardes utiles et d'en régler les effets. En tant que sacrement, c'est à l'Eglise de régler les conditions auxquelles elle voudra s'associer à l'Etat pour donner au mariage ce double caractère civil et religieux. Par suite, lorsque vous trouvez dans l'histoire certaines restrictions attachées au contrat, aussi bien que certaines facilités qui permettent d'en neutraliser ou d'en éviter les résultats ordinaires, il faut d'abord voir si c'est l'Etat qui agit ou l'Eglise— autrement vous risquerez bien d'attribuer à César ce qui appartient à Dieu et réciproquement. Votre Diable pourrait bien gagner à cette façon de traiter le sujet, mais la vérité pourrait en souffrir. Aussi, c'est à la loi civile qu'il faut vous en prendre si vous trouvez mal que les mariages d'enfants de famille aient été déclarés nuls, lorsqu'ils étaient contractés sans le consentement de celui sous la puissance duquel ils étaient. C'est l'empereur Théodose qui a défendu, à peine de nullité, le mariage entre cousins germains, qui était permis avant cette loi. C'est Justinien qui a fait de l'alliance spirituelle un empêchement dirimant de mariage. Celui de la disparité des cultes a été établi par les empereurs Valentinian, Valens, Théodose et Arcade, qui ont prohibé les mariages entre chrétiens et juifs. "L'Eglise," ajoute encore Pothier, "*n'a jamais regardé ces lois des empereurs sur les mariages, comme des entreprises de la puissance séculière sur la puissance ecclésiastique; bien loin de là, nous avons plusieurs canons de concile qui en recommandent l'observation et qui prononcent des censures contre ceux qui ne les observent pas.*" Et puis il cite force théologiens pour appuyer son opinion.

Il est donc évident que l'Etat et l'Eglise ont eu chacun

leur part dans cette question et que l'Eglise, tout en insistant sur la qualité sacramentelle du mariage, n'a pas cru devoir s'opposer aux prohibitions que le pouvoir séculier, agissant par des motifs d'ordre public, avait cru devoir prononcer. Mais lorsqu'il s'est agi de dissoudre le contrat une fois fait, et une fois la sanction religieuse donnée à cet acte, l'accord a cessé d'exister. Les lois civiles étant devenues très relâchées au sujet du mariage, l'Eglise s'est interposée pour protéger la sainteté d'un sacrement aussi important. Les Pères ont reconnu l'élément sacramentel dans les premiers âges de l'Eglise: elle a imposé des censures ecclésiastiques aux chrétiens qui désobéissaient à ses injonctions—mais elle ne possédait pas le pouvoir civil nécessaire pour rendre ces foudres effectives. Plus tard elle a pu se faire attribuer la juridiction exclusive dans les causes ecclésiastiques et depuis le huitième siècle, la doctrine sacramentelle du mariage a été mise en vigueur: cela n'a pas cessé jusqu'au Concile de Trente qui a mis le sceau de ses décrets sur la loi antérieure.

Tout cela semble si simple, si clair, je pourrais dire tellement démontré, que je me demande comment vous avez pu vous y tromper. Quel dommage, Monsieur, que tout en lisant la pétition du Dr. Drouet qui vous a tant aidé à écrire votre livre, vous n'ayez pas regardé ce que disaient Merlin, Pothier et tant d'autres qui en savaient autant, je pense, que ce médecin pétitionnaire—homme de science, sans doute et que, ne connaissant nullement, je respecte parfaitement. Il est vrai que si vous aviez feuilleté ces livres poudreux vous n'auriez peut-être pas écrit ces charmantes pages, car vous n'êtes pas de ceux, je pense, qui crient " Tant pis pour les faits " lorsque les faits sont contre eux.

Mais passons de la France à d'autres pays, à celui, si vous le voulez, de votre prédilection. Je ne parle pas de l'Allemagne, mais de l'Angleterre, et comme il ne s'agit pas ici d'histoire de France, que vous devez connaître bien mieux que moi, je me permettrai de vous signaler quelques erreurs capitales, si graves que vous allez bien en vouloir à ce bon Docteur, si c'est lui qui vous a renseigné, ou à votre Diable si c'est lui qui vous a inspiré.

D'après vous, Monsieur, les pays moraux et heureux sont ceux où existe le divorce, et comme c'est à la Réforme qu'est dû ce bienfait inestimable, les pays réformés valent bien mieux que les pays catholiques. Ergo l'Angleterre est plus morale que la France. Je vous avouerai, Monsieur, sans vouloir vous offenser, qu'à votre place je me serais gardé de parler ainsi de mon pays, même ce fût-il vrai. Je crois que la patrie, c'est un peu comme la mère qui nous a nourris; elle peut avoir commis des fautes, mais le fils qui l'insulte n'en est pas plus généreux et plus brave pour cela. Mais c'est là une affaire de goût et je n'ai certes pas la prétention de rien vous enseigner sur des questions semblables. Je crois toutefois qu'en vous relisant, vous regretterez d'avoir écrit que chez les Anglais, les Allemands et les Suisses, la famille est plus nombreuse, plus morale, plus unie, et plus respectée que chez vous.

Je crois même que vous nous faites l'honneur, à nous Américains, de nous comprendre parmi vos supérieurs dans toutes ces belles qualités, mais comme vous dites en même temps que les Etats-Unis contiennent déjà 85 millions d'habitants, je ne suis pas aussi flatté que je voudrais l'être de cette concession importante. Le dernier recensement ne nous a donné qu'une quarantaine de millions, y compris les Indiens, non taxés;

vous nous faites donc croître et multiplier avec une rapidité qui ne peut-être expliquée que par les effets merveilleux du divorce. Que dirait Malthus d'un système qui viendrait tout d'un coup augmenter les populations d'une façon tellement vertigineuse? Il ne serait certes pas partisan de M. Naquet, même s'il ne comprenait pas trop pourquoi la séparation des époux dût entraîner des effets tellement contraires à la logique. Mais enfin, c'est là un petit détail de 30 à 40 millions, et comme vous assignez aux Etats-Unis place pour un milliard d'habitants, ce léger surcroît ne compte guère.

Mais revenons à l'Angleterre. Vous nous faites, Monsieur, une charmante photographie d'une famille anglaise de vos amies, le mari septuagénaire, père d'une quinzaine de beaux enfants, la mère douce et bonne, même pour les enfants de son prédécesseur, les fils et les filles unis, aimants et obéissants—enfin le paradis domestique dont les protestants ont seul le privilège—en attendant la loi Naquet. Tout ce bonheur, pour vous, vient clairement de la loi du divorce qui régit ces époux si unis, et il est avéré pour vous que s'ils ne savaient clairement que cette union n'est pas indissoluble, tout ce bonheur s'effondrerait; ces insulaires seraient alors réduits à l'état de Français. Comme vous devez être bien emporté par l'ardeur de votre travail, Monsieur, pour n'avoir pas senti quelle injure vous faisiez à vos amis, en supposant que l'idée d'un divorce ait jamais pu effleurer leur imagination! Pensez-vous sérieusement que cette honnête femme, en donnant sa main à cet honnête homme devant l'autel—car je gagerais que ce n'est pas le mariage civil qui les a unis—songeait déjà à sortir de l'union qu'elle contractait et préparait ses engins de sauvetage?

Croyez-vous que la pensée d'un adultère possible, d'un divorce, d'une séparation légale, d'un nouveau mariage aient terni la pureté de leur affection? Non, Monsieur, il n'en est rien: et si vous demandiez à cette digne épouse et mère si la loi du divorce entre pour quelque chose dans son bonheur, que ferait-elle? Il est probable qu'elle appellerait son mari pour vous expulser de chez elle. Mais si, prenant votre qualité de moraliste français en considération, elle daignait vous répondre, vous verriez quelle injustice vous lui faites. Elle vous dirait qu'elle s'est donnée sans réserve et sans arrière pensée, qu'elle avait foi en l'honneur de cet homme, et si la pensée douloureuse d'une séparation a été entrevue par elle, ce n'était que la séparation temporaire de la mort—car la mort même ne pourrait la divorcer que pour un temps de l'homme que Dieu lui avait donné pour mari. Et si vous lui aviez dit que le divorce pour elle était "une bouée de sauvetage ou une pompe à incendie," comme vous le dites si gentiment dans votre livre, je crois, pardonnez-moi, Monsieur, qu'elle vous aurait ri au nez.

Quant au mari, si vous le consultiez et qu'il respectât toujours votre qualité de moraliste français, si vous lui disiez gravement, comme vous nous le dites à nous, que Henri VIII. avait introduit le divorce en Angleterre, en même temps que la Réforme et que vous attribuez la supériorité de l'Anglais sur le Français à cette heureuse transformation des lois, je crois, son étonnement passé et le temps ne lui manquant pas, qu'il vous donnerait quelques explications que je suis tenté de vous donner ici.

En effet, Monsieur, si vous croyez sincèrement que ce monarque amoureux a doté sa patrie de la législation qui empêche M. Naquet de jouir du sommeil, si vous

vous imaginez qu'il y a depuis cette époque des juges et des tribunaux pour recevoir les époux malheureux et leur octroyer le droit de convoler en de nouvelles noces, si vous pensez que, même en ce moment, votre matrone anglaise trouverait un juge pour la débarrasser de son époux, fût-il coupable de trahison, vous vous trompez bien, et je pourrais vous retorquer ce que vous dites à Monsieur l'abbé, avec au moins autant de raison : " Ou vous savez, Monsieur—et je recule devant cette hypothèse, ne fût-ce que par politesse—ou vous savez, dis-je, qu'il n'y a pas un mot de vrai dans ce que vous avancez là, et alors, comment l'avancez vous? ou vous croyez dire la vérité, et alors comment êtes vous si mal renseigné?" Voyons ce qu'il en est de ces affirmations si hardies.

Le roi Henri était, comme vous l'avez entendu dire, un catholique ardent. Il passerait de nos jours pour un clérical de l'espèce la plus dangereuse. Lorsque Luther, *le grand Luther*, commença sa campagne anti-papale, il n'eut pas d'ennemi plus convaincu que ce roi dévot. Sa main royale ne dédaigna pas de prendre une plume pour réfuter les erreurs dangereuses du moine hérétique, et ce livre qui n'est certainement pas écrit d'un style aussi brillant que le vôtre, lui valut le titre de Défenseur de la Foi, que lui conféra le Pape. Ce titre lui sembla si honorable, qu'il s'en affubla d'office et le transmit sans scrupule à ses héritiers. Mais ne voilà-t-il pas qu'après une quinzaine d'années de mariage, des scrupules de conscience lui vinrent, et le firent douter de la validité de son mariage avec Catherine, sa bonne et fidèle épouse. Il est possible que ces scrupules se fussent dissipés à l'aide de la prière, de la mortification et des conseils de son directeur—mais ne voilà-t-il pas, coïncidence fâcheuse,

même diabolique, que la sémillante Anne vient, de ses beaux yeux, aggraver les doutes pénibles qui tourmentaient la conscience délicate du monarque. Et la jolie Anne n'entendait pas la plaisanterie—elle voulait être courtisée pour le bon motif ou pas du tout. Enfin vous connaissez la catastrophe. Le Saint Père refusa d'annuler le mariage et de reconnaître la valeur de ces scrupules royaux. D'autres, plus complaisants, lui vinrent en aide; nombre de théologiens déclarèrent le mariage avec Catherine nul, et le grand scandale du siècle fut consommé. Jusque là il n'y avait pas de *divorce* dans ce que Merlin appelle le *sens propre* du mot, mais cette dissolution qui a si souvent eu lieu pour cause de parenté ou autre, et qui paraît tant choquer vos sentiments quand vous la trouvez dans l'histoire catholique.

Mais le règne de la belle Anne ne fut pas long. Je crois bien qu'elle n'avait pas conservé sa vertu avec beaucoup de soin avant le mariage; il est probable qu'Henri ne trouva pas sans raison que sa conduite, comme épouse, laissait beaucoup à désirer. Mais il n'était pas aussi difficile de se débarrasser de la jeune femme que de Catherine, parente d'un monarque aussi puissant que Charles V. Aussi Henri s'empressa de la faire décapiter d'une façon très sommaire; mais pas si vite qu'il n'eût eu le temps de faire déclarer le mariage nul. Vous avouerez que c'était manquer de logique. Si elle n'était pas la femme légitime du roi, elle n'avait pas commis de crime, et l'on ne devait pas lui couper la tête; si le mariage était valable la sentence de dissolution était injuste. Mais les rois ne se targuent pas de logique; c'est tout au plus bon pour vous et moi et encore ne réussissons nous pas toujours à montrer que nous possédons cette qualité utile dans la discussion.

La tête d'Anne n'était pas encore tombée, que ce monarque, dont l'amour de la vie domestique se manifestait d'une façon si touchante, avait trouvé une autre épouse, et, tout de blanc habillé, Henri l'alla chercher le jour même. Celle là, Jane Seymour, eut le bonheur de mourir dans son lit. Jusque là nous avons une séparation, un divorce par le bourreau et un troisième par la main de Dieu—mais jusqu'à présent la loi Naquet ne paraît pas sur la scène.

Maintenant arrive la pauvre princesse allemande, Anne de Clèves qui avait eu le bonheur de plaire au roi, en peinture. Malheureusement le roi, fort connaisseur en beauté féminine, ne trouva pas sa nouvelle épouse à son gré. Il fallait donc s'en débarrasser. Mais elle n'avait pas été fiancée de son frère comme Catherine, il ne pouvait la décapiter, comme Anne, et l'ardeur de sa vocation maritale ne lui permettait pas d'attendre que la Providence voulût bien trancher les jours de sa nouvelle épouse. Et puis, ces Allemandes ont la vie si dure. Il fallait donc un nouveau moyen; car il ne s'agissait pas de dire tout simplement que les charmes de la pauvre Anne étaient insuffisants. Ce moyen n'était pas difficile à trouver. Henri s'étant octroyé la qualité de pape, avait son clergé à lui: la dissolution fut bien vite prononcée, et cela avec un renfort de théologiens qui aurait dû suffire à divorcer une douzaine de rois. Il y avait là deux archevêques, dix sept évêques et cent-trente ministres qui s'empresèrent de déclarer ce mariage parfaitement nul et non avenue: Le roi avait eu la main forcée (comme votre cuirassier); l'on avait faussement prétendu toutes sortes de choses, l'induisant par là en erreur; enfin il n'y avait pas eu de consommation. Tout cela comme sous l'ancien système, n'est ce pas? Et puis l'Eglise,

car ces Messieurs s'intitulaient bel et bien l'Eglise, déclara gravement que le roi Henri et la reine ou princesse Anne étaient parfaitement libres de se jeter dans de nouvelles aventures matrimoniales. M. Froude, que l'on appelle, par courtoisie, historien, nous assure que cette sentence était parfaitement légale. Henri, du haut du ciel, sa demeure dernière, doit être content de cette approbation posthume. Vous comprenez que, devant cette facilité dans les procédés, que lui offrait son nouveau système, Henri ne s'arrêta pas là. Et puis, le Parlement le supplia de prendre une cinquième femme, pour le bien de son royaume, sacrifice auquel Henri se résigna avec une promptitude qui témoigne hautement en faveur de son amour pour ses sujets. Il choisit cette fois Catherine Howard, jeune et jolie personne de bonne famille, et qui par son éducation, lui promettait les satisfactions intimes auxquelles aspirait son cœur. Mais il fut bien malheureux cette fois. Au bout d'un an de mariage, la nouvelle reine fut accusée d'un gros crime et faut-il ajouter, les apparences furent contre elle. Je dis les apparences, parce que le prince dont nous parlons avait introduit une nouvelle méthode de procédure qui consistait à faire condamner l'accusé sans procès préalable. Il s'adressait au Parlement, le Parlement passait une loi *ad hoc*, et c'était fait. Cela simplifiait singulièrement les choses, et le roi, qui était assez peu disposé à la patience, n'avait pas à attendre que les formes ennuyeuses des tribunaux ordinaires fussent remplies. Il est juste d'ajouter que le nouvel archevêque Cranmer, avait essayé d'établir que Catherine, avait été la fiancée, avant son mariage, de son complice dans le crime dont elle était accusée. Mais, il n'y eut pas moyen d'établir le fait et Catherine dut périr sur

l'échafaud pour rendre Henri veuf une cinquième fois. Je ne vous conteste pas que vous puissiez trouver là un argument en faveur du procédé Naquet. En effet, si Henri avait pu obtenir un divorce, il n'y avait plus besoin de lois du Parlement, et l'on n'était pas réduit à invoquer l'aide du bourreau. Mais, d'un autre côté, vous admettez que jusqu'à présent vous ne voyez chez Henri ni chez ses conseillers spirituels aucune pratique dans le genre de celle que vous défendez si éloquemment.

Mais Henri ne s'arrêta pas là. Il se maria pour la sixième fois. Mais cette fois le divorce fut prononcé—bien à temps aussi—pour la reine. La mort vint interrompre le cours de cette vie agitée et, chose singulière, Henri VIII. eût enfin une veuve! Elle dut bien respirer quand elle se vit libre, particulièrement quand elle put connaître les noirs desseins que nourrissait à son égard son défunt consort.

Vous voyez donc, Monsieur, que le roi Henri, dans la vie privée—si ce mot est admissible—n'a pas montré qu'il serait de votre côté lorsqu'il s'agit d'encourager les unions temporaires ou, si vous préférez, de permettre aux époux mal assortis de se débarrasser l'un de l'autre sans homicide volontaire. Vous verrez que ce même roi était fort Catholique dans ses théories religieuses. Il eut même accepté le dogme de l'Infallibilité—pourvu qu'il fût reconnu comme Pape. La discussion religieuse était fort dangereuse en sa présence et je ne vous aurais pas conseillé de faire de la théologie de fantaisie devant lui. De nos jours je n'y vois guère d'inconvénient puisque cela vous fait plaisir; cela amuse vos lecteurs et cela vous range d'un coup parmi les théologiens éminents qui s'occupent en ce moment de façonner la conscience de la France. Mais

l'on a vu dans ces premiers jours de révolte contre l'Eglise, catholiques et protestants traînés sur la même claie, pour périr sur le même échafaud. Vous me direz que cela vous est bien égal comme vous n'êtes ni l'un ni l'autre: n'importe, la neutralité même a ses dangers.

Maintenant voyons si, dans la législation Anglaise faite pour le commun des martyrs, il y a une trace de ces lois de divorce qui datent suivant vous de Henri VIII., c'est à dire de plus de trois siècles. J'ai beau chercher, creuser, demander, je ne vois rien venir. Vous serez bien surpris d'apprendre que la première loi établissant des Tribunaux pour les causes de divorce et *permettant le divorce*, date seulement de quelques années: elle est plus jeune que vous puisqu'elle date de 1858, époque, si je ne me trompe, où vous aviez déjà enrichi la littérature de votre pays des "Aventures de 4 femmes et d'un Perroquet." Cet ouvrage (que j'ai lu du reste avec l'intérêt que la jeunesse porte toujours à ces singuliers produits de l'intelligence) fut écrit, je crois, avant que vous ne fussiez diplômé moraliste: je le crois et je l'espère.

Avant d'examiner cette nouvelle loi, et de vous démontrer combien peu elle répond à vos aspirations, laissez-moi vous consoler par une petite concession—hommage dû à la vérité historique: c'est que l'on pouvait divorcer en Angleterre avant cette date récente pourvu que l'on eût les moyens de se procurer une loi spéciale du Parlement. Le Parlement, vous devez le savoir, est omnipotent. Il peut changer la religion de l'Etat, la succession royale, les articles de foi,—il peut bien accorder une séparation à un époux influent et riche. Mais un court examen de cette situation exceptionnelle ne fera, je crois, que vous

prouver la vérité de ce que j'avance, lorsque je vous affirme que la théorie du droit anglais et la théorie de l'Eglise romaine se ressemblaient à s'y méprendre, c'est à dire jusqu'en 1857. Si vous ne me croyez pas sur parole, je vais vous citer ce que dit *l'Encyclopédie Britannique*, édition nouvelle—art. "Divorce":

Jusqu'au passage de la loi sur le Divorce de 1858 la théorie de la loi d'Angleterre était la même que la théorie de l'Eglise romaine. Il y eut bien des efforts durant la période de la réforme pour introduire une plus grande facilité dans le divorce . . . mais la loi demeura la même. La constitution des mariages était du ressort des tribunaux ecclésiastiques. Le lien était indissoluble. Le mariage pouvait, il est vrai, être déclaré nul dans certains cas, par exemple lorsque la parenté des conjoints les rangeait dans les degrés prohibés. Mais cette procédure ne constituait pas une dissolution du mariage autant qu'elle déclarait qu'aucun mariage n'avait eu lieu entre les parties. La séparation de corps et de biens était accordée pour adultère et pour cruauté. Dans ces cas le mariage, étant dans l'origine valable, n'était pas dissous, mais une séparation était décrétée pour une époque déterminée ou pour un temps indéfini.

Voyez, Monsieur, comme ces quelques lignes viennent se heurter contre vos affirmations! Que devient votre théorie en tant qu'elle est basée sur les progrès moraux si surprenants qu'a pu faire le peuple anglais par la simple énonciation d'une loi de divorce? Et s'il est démontré que la supériorité morale du peuple anglais ne découle pas de la facilité supposée avec laquelle les époux se séparent, comment pouvez-vous affirmer que votre loi va vous relever de votre abaissement, purifier vos mœurs et vous rendre les égaux des Allemands et des Anglais?

Maintenant revenons à ces actes du Parlement par lesquels le divorce fut quelquefois prononcé. Cette bouée de sauvetage était-elle suffisante pour empêcher les sinistres? Cette pompe à incendie fonctionnait-elle de façon à assurer le bien public?

Il n'est pas difficile de vous répondre. Voyons d'abord la procédure pour mettre en mouvement ce corps auguste que l'on nomme le Parlement. Il fallait pour obtenir ce remède du divorce trois procès—c'est tout. Mais comme ils étaient tous assez longs—je ne parle pas ici de la dépense—il est fort probable que dans bien des cas la mort se chargeait de la poursuite ou de la défense et tranchait la question sans appel. La procédure était celle-ci :

1. Il fallait s'adresser aux tribunaux ecclésiastiques; comme ils pouvaient seulement accorder ce que leur permettait la loi, ils séparaient les conjoints en attendant mieux.

2. Mais il fallait aussi que le mari poursuivît le complice de sa femme en dommages intérêts.

3. En admettant qu'il réussît dans ces deux affaires et qu'il ne fût pas mort de vieillesse ou autre cause légitime, il pouvait s'adresser au Parlement. "Trois procès"—je cite encore *l'Encyclopédie*—"trois procès ecclésiastique, civil et parlementaire étaient nécessaires." Le divorce devint le remède du riche. Et cependant ce ne fut qu'en 1857, et même alors en face d'une opposition déterminée, que cet état de choses pitoyable fut modifié.

Voici comment un magistrat éminent expliquait les absurdités de ce système à un pauvre diable accusé de bigamie. Pour toute défense il avait pu seulement expliquer que sa femme l'avait volé, puis qu'elle s'était enfuie avec un autre homme. Et cela, voyez

donc, dans le pays de la Réforme et d' Henri VIII. ! M. le Juge Maule lui adressa alors la semonce suivante (ceci se passait en l'an de grâce 1845) :

Vous auriez dû commencer un procès en dommages intérêts. Des dommages obtenus, votre adversaire n'aurait probablement pas pu vous payer le premier sou, et vous auriez eu à payer vos propres frais, soit, cent ou cent cinquante livres sterling. Vous auriez dû ensuite vous présenter devant les tribunaux ecclésiastiques pour y obtenir une séparation de corps et de biens et alors à la chambre des Pairs où, après avoir prouvé que vous aviez rempli ces formalités préliminaires, vous auriez reçu la permission de vous remarier.

La dépense aurait été de 300 à 1,000 livres sterling. Vous dites que vous êtes pauvre : mais je dois vous dire qu'il n'y a pas une loi pour le riche et une autre pour le pauvre.

Comme le pauvre forme un élément très considérable de la population britannique, vous m'avouerez qu'une procédure qui coûte tant de peine et tant de temps et qui exige une dépense de 20,000 à 25,000 francs n'est pas d'un secours bien efficace. Comme vous montrez une sympathie très naturelle pour la femme et qu'elle aussi a besoin de protection, vous tiendrez ce remède par voie législative en mince estime lorsque je vous dirai que cette chambre, peu galante, repoussait généralement les pétitions que présentaient les épouses outragées. Pour préciser, je vous dirai que le premier divorce accordé à une femme date du siècle présent, et encore cela se fit-il sous des circonstances exceptionnelles. Si donc vous excluez *toutes* les femmes et *tous* les pauvres, vous avez un système passablement arbitraire et bien peu propre à moraliser les masses. Et même pour les *hommes riches*, les divorces parle-

mentaires ne commencèrent à compter que lorsque les Georges arrivèrent d'Allemagne et donnèrent cette impulsion à la cause des mœurs qui se développa d'une façon si brillante sous George IV.

Mais il nous reste à examiner la loi de 1857. Celle-là, elle existe : je vous en accorde tous les bénéfices, mais franchement je crois que le système Naquet est peut-être moins mauvais. Cela peut paraître invraisemblable, mais jugeons la d'après vos propres règles.

La loi sur le divorce, dites-vous, doit être égale pour tous. L'homme ne doit avoir aucun avantage sur la femme. Les lois qui refusent leur protection à l'être faible et opprimé ne peuvent être bonnes, puisqu'elles commencent par consacrer l'injustice et par violer les préceptes les plus élémentaires de l'équité.

Or, que dit la loi de 1857 ? Elle est d'autant plus intéressante *qu'elle est basée quant à la femme sur l'ancienne coutume parlementaire*. Comme vous l'avez vu plus haut et comme vous pouvez vous en convaincre en consultant McQueen (*Procéd. Parlementaire*, 473 *et seq.*), il ne fut jamais d'usage d'accorder à la femme un divorce pour le *simple adultère* du mari. Il fallait des circonstances aggravantes de la part de celui-ci, quoique, de son côté, l'adultère de son épouse dans sa simplicité la plus complète était suffisant. La loi de 1857, se conformant à ces principes, accorde toujours la même faveur au mari, aussitôt qu'il a établi que la femme depuis la célébration du mariage s'est rendue coupable d'adultère. Mais lorsqu'il s'agit des torts maritaux, la simple peccadille dont il s'agit ne suffit plus. Il faut qu'il y ait de la part du consort mâle :

1. Adultère.
2. Désertion.

3. Que la durée de cette désertion soit d'au moins deux ans.

4. Qu'elle soit *sans excuse* raisonnable.

Il y a quelques autres cas prévus de grossière brutalité, de bigamie, d'inceste, etc., qu'il ne nous convient pas d'examiner, car je pense qu'ils sont rares en Angleterre, même, ne vous déplaît, en France. Il y a encore un cas où la malheureuse épouse pourrait être débarrassée de son époux ; c'est celui où, non content de former des liens immoraux hors de chez lui, le mari traiterait sa femme avec tant de cruauté que les tribunaux ecclésiastiques accorderaient la séparation de corps et de bien. C'est à dire que l'adultère lui est permis, pourvu qu'il ne la batte pas et que la cruauté n'entraîne pas grand chose pourvu qu'il se passe de consolations illicites. Vraiment M. Naquet doit être fier. Il n'aurait pas trouvé ces combinaisons ingénieuses pour encourager ses concitoyens volages.

Si donc vous allez moraliser la France par le divorce, parceque la moralité anglaise est due à cette cause, vous m'avouerez, Monsieur, que votre édifice repose sur un bien faible fondement. Cette vertu supérieure doit être due à quelque autre cause, peut-être à un théâtre plus pur, une littérature plus saine et autres choses que vous connaissez mieux que moi.

Je me figure cette excellente dame anglaise ayant à se plaindre de son mari. Charmé par une de ces sirènes aux cheveux blonds, que vous peignez si bien, il oublie ses 70 ans, sa femme, ses enfants, son honneur. Il abandonne tout cela pour visiter Cythère en compagnie de la dite sirène. Il peut faire cela sans risque, sans scrupules, légaux au moins, pourvu que, parti le 1 janvier, 1880, il soit rentré au domicile conjugal avant minuit du 31 décembre, 1882. Le voyez vous d'ici

bouclant sa valise, embrassant sa Marguerite, prenant son billet de chemin de fer, tout cela au grand galop pour ne pas dépasser le terme fatal—la pauvre délaissée attendant, comptant les secondes de crainte qu'il n'arrive avant l'heure attendue depuis si longtemps? Quelques instants de plus, il sera trop tard, elle sera libre. Hélas! il n'a pas manqué le train, les deux années auront encore cinq minutes à vivre—elle est perdue! il est sauvé! C'est là ce que vous appelez cependant sa bouée de sauvetage, sa pompe à incendie!

Pour l'Allemagne et ses vertus morales, inconnues ou négligées dans votre pays, je n'y connais pas grand chose, mais je m'étais laissé convaincre que le "Pays des milliards" ne valait guère mieux que celui d'où provenaient ces trésors. Je sais que les Allemands catholiques et protestants se sont fort bien battus contre la France en 1870, mais je n'ai jamais supposé que la question de divorce eût eû beaucoup d'influence sur les résultats de Reichshoffen et de Sedan. L'on était pauvre, bien discipliné, bien commandé d'un côté; riche, délicat, orgueilleux, peu discipliné, médiocrement conduit de l'autre. Maintenant que vous avez vos milliards en moins et les Allemands ces milliards en plus, je crois bien que votre niveau moral est un peu le même. Vous aviez trop de prospérité, de bien être et de jouissance chez vous. Votre grand-père, le général, vous aurait dit que ce n'est pas avec cela que se font les soldats patients et durs.

Pour la chère petite Suisse avec *ses enfants blonds, roses, bouclés, aimant les militaires*, je ne pense pas que ces jolies qualités soient dues exclusivement à la liberté conjugale, telle que vous l'entendez. J'en ai vu de blonds et bouclés en France aussi, et j'aime à croire que leurs mères étaient tout aussi pures que

ces blondes montagnardes que j'estime autant que vous.

Arrivons maintenant aux Etats-Unis d'Amérique. Ici, je l'avoue, je suis pris par mon côté faible, et je veux bien admettre, puisque vous y insistez, que nous possédons toutes les qualités morales, qui, suivant vous, manquent à vos compatriotes. Seulement, nous ne nous doutions pas, soyez en certain, que l'excellence exceptionnelle de nos mœurs dût être attribuée à nos lois de divorce.

Ces lois de divorce existent, dites vous, aux Etats-Unis. Comme thèse générale vous avez presque raison et je suis heureux de vous féliciter de ce succès relatif. Mais vous n'êtes pas dans la vérité absolue, car l'Etat de la Caroline du Sud n'a jamais voulu accepter une législation qui portât atteinte à la dignité du mariage. Et cet Etat n'est pas un des moindres de l'Union, si nous considérons le courage et l'intelligence des citoyens comme éléments de grandeur. Ses fils ont été parmi les plus distingués de notre histoire nationale. Ils ont brillé dans notre législature, dans nos guerres, dans notre politique et même dans cette guerre de Sécession à laquelle vous faites allusion. Elle a fait presque oublier la faute primitive qu'elle a commise, par l'ardeur de son courage et par l'héroïsme d'une résistance désespérée. Elle a démontré, dans tous les cas, que la virilité de ses enfants a pu résister même à l'indissolubilité du mariage.

Quant aux autres Etats où il y a en effet ce que vous appelez vaguement "des lois de divorce," il ne faut pas supposer qu'ils soient encore arrivés à la perfection, telle qu'elle apparaît dans votre beau projet.

Dans l'Etat de New York—l'Etat IMPERIAL de New York—les époux peuvent recourir à cette extrémité,

mais il n'y a qu'une seule cause reconnue par nos lois. L'époux adultère—mari ou femme—peut-être déclaré indigne du nom honorable de mari ou de femme, s'il a violé cette clause de son contrat. La loi le déclare déchu de sa dignité domestique *et lui interdit le re-mariage*.¹ Cette loi vous semble bien peu satisfaisante, n'est ce pas? Et puis la procédure n'est pas trop facile. Il faut que la faute soit bien et dûment constatée; il faut que la partie demanderesse n'ait eu aucune part dans la commission du crime de lèse mariage, autrement elle ne pourra bénéficier de la faute, puisqu'elle y a trempé. Ce système me semble tellement différent du vôtre qu'il ne doit pas vous être d'un grand secours. Si vous écarterez l'élément catholique, il ne semble nullement étrange qu'un contrat attaqué dans son essence la plus intime par une des parties puisse être dissous au bénéfice de l'autre. Et même l'élément religieux qui compte pour quelque chose, même en dehors de l'Eglise romaine, trouve une certaine satisfaction dans le texte que vous citez de Saint Mathieu et ne voit rien de contraire à la loi divine dans une semblable séparation. S'il doit y avoir une législation sur le divorce, nul ne pourra nier que celle-ci soit la plus logique, la plus digne, la plus décente, que l'on puisse inventer.

Dans les autres Etats vous trouveriez une législation qui varie suivant les besoins et les opinions des populations respectives. Il y a parfois une bien regrettable facilité dans la loi, mais nulle part n'a-t-on vu proposer,

¹ La loi de New York a été changée en 1879 afin de permettre à l'époux convaincu d'adultère de se remarier en obtenant une permission spéciale de la Cour; cette permission peut-être accordée lorsque cinq ans se sont écoulés depuis le divorce, que le défendeur fait preuve de bonne conduite pendant cet intervalle, et que le demandeur est remarié.

à ma connaissance, un projet de loi aussi subversif, aussi extravagant que celui que vous voulez imposer à votre pays. Rien de la sorte n'est venu, Dieu merci, souiller jusqu'ici notre législation et si le jour arrivait, j'aurais une aussi mince estime de la vertu de mes concitoyens que vous avez vous-même de la moralité des vôtres.

Ceci est très facile à dire : voyons si c'est susceptible de démonstration.

D'abord, votre loi Naquet est absurde et illogique. C'est clair comme le jour ; voici pourquoi. (Je cite les premiers articles tels que vous nous les donnez :)

“ . . . Le divorce a lieu par le consentement mutuel des époux, ou par la volonté d'un seul.

“ Le divorce par la volonté d'un seul a lieu :

“ 1. Pour cause déterminée ; 2. *Sur la demande expresse et persistante de l'un des époux, affirmant sa volonté de dissoudre son mariage sans invoquer néanmoins de cause déterminée.*” ¹

Je vous défie, Monsieur, de faire une clause plus large que celle-là. Elle couvre tous les cas possibles et imaginables. Si l'époux peut dire : “ *Je veux dissoudre mon mariage,*” sans alléguer d'autre motif que sa volonté, quel besoin de donner des causes déterminées ? *Stet pro ratione voluntas.* Sa volonté prend place de toutes les raisons, elle prime tous les arguments. Il est donc aussi inutile qu'absurde de déclarer quelles causes

¹ “ Je dois dire ici que je ne connais le projet de loi Naquet que par le texte qu'en publie M. Dumas. Je ne connais donc pas les *détails* de procédure, de délais, etc., dont il ne parle qu'en termes très généraux. Il est possible que ces *détails* viennent modifier en quelques points la brutalité du texte—mais ils ne peuvent empêcher que le conjoint mécontent ait reçu le droit inqualifiable de dissoudre le mariage de sa propre volonté, *sans invoquer de causes déterminées.*”

peuvent suffire puisqu'il n'en est besoin d'aucune. A quoi bon parler plus tard, dans ce même projet, de causes déterminées, telles que les sévices, l'abandon, les maladies, l'absence, etc. N'ai-je pas raison de dire que c'est parfaitement absurde?

Quant au divorce basé sur le consentement des deux époux, j'en comprends la logique. En effet, l'acte de mariage ne constituant qu'un contrat ordinaire, débarrassé de tous les éléments de religion, d'ordre public, de nécessité sociale, il est naturel que les époux mal assortis ou variables se quittent pour aller chercher ailleurs ce qu'ils ne trouvent pas dans le conjoint qu'ils possèdent. Si je vous achète un cheval et qu'au bout d'un mois, il me plaise de vous le rendre et à vous de l'accepter, rien de mieux. Si je prends une cuisinière et qu'avant la fin du terme convenu, ses ragoûts ne me convenant pas, il me plaise de la congédier, rien de mieux, pourvu qu'il lui plaise de s'en aller. Mais ce privilège inqualifiable accordé à l'une des parties de rompre à son gré, *sans cause déterminée*, le contrat le plus important de tous, cette faculté exorbitante donnée à l'homme de chasser une femme honnête et pure aussitôt sa passion assouvie,—à la femme d'abandonner le mari aussitôt qu'elle en trouve un mieux fait ou plus riche ou plus aimable que celui qu'elle a, et qui l'aime toujours, cela dépasse tellement les bornes, que je crois vraiment que vous déshonorez le nom même du divorce et que vous devriez inventer quelque chose de nouveau pour qualifier une monstruosité semblable.

Mais, Monsieur, avez-vous réfléchi, lorsque vous nous avez recommandé cette nouveauté? Avez-vous pensé aux conséquences fatales de cette écluse ouverte aux passions brutales, égoïstes de notre pauvre humanité?

Quoi! vous, père, vous élevez votre fille dans une atmosphère de candeur, d'innocence, d'affection, vous la préparez à devenir la femme d'un homme de bien en cultivant ces qualités de cœur et d'esprit que l'on trouve tout aussi souvent chez vous qu'autre part; vous la donnez en mariage, belle, chaste, aimante, à l'homme qui lui plaît; puis un beau jour, le caprice de cet homme ayant duré un mois, deux mois, six mois, il peut aller tranquillement chez un juge lui dire: "Monsieur, je viens ici vous faire *la demande expresse et persistante* exigée par cette admirable loi Naquet; c'est *ma volonté* de dissoudre mon mariage. Dépêchez vous, je vous prie, car j'ai devant moi une jeune fille que je désire épouser et si vous ne vous hâtez un autre me l'enlèverait."

Et si ce magistrat, peu rompu aux affaires de ce genre, interpose une objection assez naturelle, s'il lui demande les motifs, (est-ce l'adultère, les injures graves la calomnie, etc.?) le postulant lui dira tout bonnement d'aller se promener, qu'il n'y a rien de ce genre et que la loi Naquet lui permet expressément de faire dissoudre son mariage, *sans invoquer néanmoins de cause déterminée*.

Et cette jeune fille, devenue jeune femme, se trouvera là, avec l'enfant qui doit naître et qui ne recevra jamais les caresses d'un père—divorcée sans faute, sans être entendue, puisqu'il n'y a pas de défense possible; elle se trouvera là regardant son mari s'en allant bras dessus, bras dessous, avec la voisine d'en face et se rendant chez le maire pour recommencer!

Cette pauvre créature qui a donné tout ce qu'elle avait de trésors, sa beauté, son cœur, son corps, son âme à cet époux, elle devra suivant vous bénir M. Naquet qui lui a ouvert, à elle comme à lui, un vaste

horizon de mariages libres et sans limites. Et vous appelez cela une loi morale qui doit viriliser la France affaiblie, anémique, relâchée!

Ce système, Monsieur, vous n'avez pu le comprendre, car vous auriez vu qu'il ne s'agissait plus de mariage mais de prostitution légalisée, prostitution d'autant plus hideuse qu'elle se pare d'un plus beau nom, d'autant plus à craindre qu'elle recrutera ses victimes dans ce qu'il y a de plus pur et de plus beau chez vous.

Et que deviendra la sécurité du foyer devant cette menace constante, contre laquelle la vertu la plus pure ne peut se prémunir?

Quel mari sera bien sûr de son bonheur domestique —quelle femme pourra compter sur un lendemain? Le ménage sans nuages est bien rare, Monsieur, s'il existe! La mauvaise humeur de l'homme, les nerfs de la femme, les préoccupations de tous les jours, la recherche du pain quotidien, l'amour propre froissé, les déceptions de tout genre—cela entre dans toutes les familles par la porte, par les fenêtres, par les toits. Pensez-vous qu'une loi devrait venir souffler le mot divorce à l'oreille des époux, dans ces moments d'ennui, de lassitude, pour ouvrir un champ à leur imagination, en leur promettant une séparation qu'ils regretteront peut-être, aussitôt faite, une liberté qui, aussitôt acquise, ruinera leur bonheur?

Vous avez d'autant moins droit à l'indulgence que vous ne faites pas une expérience nouvelle. Votre système a été essayé, vous devriez savoir avec quels fruits, non pas en Allemagne, en Angleterre ou aux Etats-Unis, mais dans l'ancienne Rome. Et vous n'avez pas le droit de supposer que les mêmes causes ne produiraient pas les mêmes effets. La nature humaine est la même aujourd'hui qu'elle était dans Rome du temps

de Juvénal et vous vous rappellerez peut-être qu'il parle d'une dame qui s'était octroyé *huit maris dans le courant de cinq automnes*. Martial va bien plus loin puisqu'il parle d'une matrone qui comptait *dix maris dans un mois* ! Saint Jérôme raconte et affirme avoir vu un mari conduire au tombeau sa vingt et unième épouse ; elle avait eu, pour sa part, vingt deux maris. Et cela sous un système qui avait bien de la ressemblance avec le vôtre. Si vous voulez être plus amplement renseigné, lisez l'historien anglais Gibbon ; sa double qualité d'Anglais et de non catholique en fait un témoin recommandable.

Une théorie spécieuse est réfutée par cette libre et parfaite expérience, *qui démontre que la liberté du divorce ne contribue pas au bonheur et à la vertu*. La facilité de séparation détruirait toute confiance réciproque et envenimerait les discussions les plus futiles : le différend insignifiant entre le mari et le tiers, qui pouvait être si facilement éclairci, pourrait être encore plus facilement pardonné, et la matrone qui dans cinq ans a pu recevoir les caresses de huit époux doit perdre son respect pour la chasteté de sa propre personne.—(Gibbon, *Empire Romain*, chapitre 40.)

Un mot de plus avant de vous exprimer l'assurance de ma considération distinguée. J'ai lu vos brillants paradoxes avec le plaisir que j'éprouve toujours quand je vous vois faire vos tours de force littéraires, mais il m'est resté, sur un point touché par vous, une impression pénible que d'autres peut-être ont pu partager. Il peut donc être utile de vous la signaler. C'est de vous entendre, vous, l'enfant gâté de la France intelligente, vous, roi de la mode et de la vogue littéraire, outrager votre patrie par des comparaisons qui la mettent aux pieds des autres nations, ou par des

plaisanteries qui sont indignes de vous comme d'elle. Pensez-vous sérieusement que le type moral de Berlin vaille mieux que celui de Paris, que toutes les femmes chastes et les jeunes filles pures soient de l'autre côté du Rhin ou de la Manche? Les liens de famille sont-ils tellement relâchés en France que vous puissiez écrire sans une exagération ridicule chez tout autre que vous, des phrases comme celle-ci :

Pour subvenir aux besoins de la maîtresse, on se réunit plusieurs, tandis que pour satisfaire aux fantaisies de l'épouse, on est seul, *quelquefois*.

Même vous, êtes vous assez sûr de votre public pour vous permettre ces vilaines choses là? Ah, Monsieur! si Dieu m'avait donné votre talent—sans votre Diable—ce n'est pas comme cela que je voudrais lui parler. Je ne lui dirais pas que ses femmes et ses filles sont indignes de regarder en face les femmes et les filles de ses voisins. Je ne lui peindrais pas ses faiblesses en termes exagérés pour aiguïser un paradoxe. Mais je les lui montrerais telles qu'elles sont—fortes, braves, patientes, laborieuses, intelligentes, sachant accepter les épreuves sans bassesse, et réparant par le travail et le recueillement les blessures d'une guerre malheureuse. Je lui montrerais l'histoire de ce passé si brillant, où la France fut toujours la première dans les arts de la paix comme dans ceux de la guerre. Je lui nommerais ses grands hommes qui ont ouvert de nouveaux sentiers à l'humanité et devant lesquels on se découvre encore. Je relèverais ce moral affaïssé, par la vérité sur ce passé si beau, et je lui ferais comprendre que l'avenir ne peut-être perdu pour les descendants de pareils ancêtres. Dans les arts les sciences, la poésie, la philosophie, la bienfaisance, le martyre, tout ce qui est

grand et beau, n'a-t-elle pas toujours été le portedrapeau? Vous aurez beau faire, Monsieur, avec toutes ses fautes, elle est encore créancière dans son compte courant avec la famille humaine.

Mais Dieu ne m'a pas donné votre talent—ni votre Diable non plus. Je me console en pensant qu'il y a compensation et que je suis peut-être et après tout le mieux partagé des deux.

Je dois m'arrêter, Monsieur: vous seul avez le droit d'exiger du public qu'il lise une brochure de 400 pages.

Veillez agréer, Monsieur, l'assurance de ma grande admiration et de ma considération la plus distinguée.

NEW YORK, 15 mars, 1880.





XIV

MORALS AND MANNERS¹

IF you will turn to Saint Paul's 1st Epistle to the Corinthians, 15th Chapter, Verse 33, of the version commonly associated with King James, you will find that he uses these words:

"Evil communications corrupt good manners."

You may think it strange that the Apostle, who had devoted his life to the weightiest matters that can engage the attention of men, should give utterance to a sentiment which, however true in itself, seems almost beneath his notice. This reflection, coupled with the fact, perhaps, that you do not place implicit reliance upon that version of the Scriptures which I have quoted, may induce you to look to some other, and, in your judgment, more reliable text, in order to ascertain whether justice is done to the illustrious Saint. If, pursuing your investigations, you turn to one of the most recent and approved versions used by Catholics (Archbishop Kenrick's), you will find that he makes the Apostle say: "Evil communications corrupt good *morals*," which is much more in accordance with what we know of the teacher's object in writing

¹ An address delivered under the auspices of the Catholic Union, 1873.

letters. Satisfactory as this may appear, I advise you to go on still farther in your researches until you reach the last edition, from the presses of a Society which is distinguished for the excellent and orthodox character of its publications. This contains precisely the same words as the King James version, and puts into the mouth of the Apostle the words "Evil communications corrupt good manners."

You have, no doubt, been taught, and your experience must have confirmed the impression, that *manners* were one thing, and *morals* another. You may therefore be a little puzzled to understand how it is that, on a matter of this importance, there should be such a discrepancy in the enunciation of precepts which you are bound to accept and to revere as proceeding from an inspired pen. You will ask yourselves whether St. Paul alluded to morals—that is, the inward graces and guiding principles which control the actions of men, or to manners, which are only the outward manifestations of those sentiments, which manifestations may be sincere or insincere, truthful or untruthful, and consequently respectable or the reverse. Of one thing we may be assured, that St. Paul cared but little for mere external appearances, for "nods and becks and wreathèd smiles," and that he never presented himself to his hearers as a teacher of deportment.

But the sentiment that I have quoted was not original with the great Saint. It was borrowed from the heathen poet Menander who lived two hundred years before the Apostle, and wrote for his hearers words which St. Paul afterwards made immortal by retracing them.

Having gone back as far as Menander, I think I may fairly abstain from farther retrogression, and ask what

he meant by good manners, and, what concerns us more closely, what the Apostle, who followed him and quoted him, intended to convey by the expression.

As to the poet himself, I may take occasion here to say that, from what we know of him, it is no injustice to his memory to say that his *manners* were better than his *morals*, and that if he came to the conclusion that either were liable to corruption from evil communication, he spoke from actual experience.

It is but fair, however, to add, that the time in which he lived was one of great corruption, and required something more than the harmonious generalities of graceful poets to purify them. Nor must we forget that both morals and manners have had different standards in different ages, and in various countries, and that nothing can be more unjust or more unphilosophical than to judge of the manners of one age or country from the standpoint of another.

Here let me enter my protest against one fallacy—that is, the fashion of referring to bygone times as “those good old times,” from the excellence of which we are supposed to have so sadly degenerated, and which assumes that everything must have been good simply because it existed in former days. I know that such has been the tendency of men certainly for two thousand years back, for the poet Horace, some twenty centuries ago, spoke of the habit which old people even then indulged in of bemoaning the excellence of the days “when they were boys.” Indeed, we may safely say that this tendency is a part of our common nature, that all men have yielded to it, except perhaps the first man Adam, who had no boyhood to regret or to praise!

But if we look back, seeking to find that period in

the past which deserves to be mentioned with favor in comparison with our own, we may seek for it in vain; and the more we look the more fully shall we become convinced that at no period have men been either more moral, or braver, or manlier, or more truthful than now. At no time have they been less cruel and sanguinary, at no time more generous and just, at none more merciful to the weak and helpless. I do not when I make this assertion allude to any special year or short series of dozen years, for there are brief periods in which a people or a community might be said to pass through a transition state. I think our own country is going through such a state at this moment, and many things which we now deplore are but the result of a great convulsion such as no nation has yet successfully withstood: we are reaping a harvest the seeds of which were sown during five years of civil war.

But looking to the past, take any country that you please, and compare its present condition with that of a former period, and the truth of my statement will be illustrated and proved.

Turn to France. She has always led the van of modern civilization, has long been first in war, and art, and science; she has ever shown a generous disposition to share with the rest of the world the treasures that she had, or fancied she had, discovered. How long would she now endure the base profligacy and the elegant immorality of her Grand Monarque and his Court? How long would she submit to the degradation of being ruled by such a king as his successor? How long would she endure the unspeakable shame of being governed by the regent that followed him?

Turn, if you please, to Great Britain. Commence with the first of the Georges, following down through

their reigns of egotism, madness, and brutality, and tell me how they compare with the sovereign now upon the throne?

Turn to Ireland, so long misgoverned and outraged, and tell me whether her condition is not infinitely better at this day than at any time since Cromwell's soldiers spread ruin and death over the land?

Look at the legislation of all civilized nations: the softened penal laws which no longer inflict death for the most trifling violations; the condition of women improved by a system that permits her to earn her bread and feed her children; see slavery dying out; the condition of the poor a constant object of solicitude; religion free to lead men to better lives and a better end;—and then tell me what age that went before is to be regretted?

To return, then, to the line that I have quoted, and which is thus differently translated, I ought to explain that for long after Menander's time, and after St. Paul's, one single expression was used to denote what we call *manners*, and what we designate as *morals*. The necessities of more modern times have required that we should subdivide the common word that heretofore existed, and which was "mores" in Latin, and "manners" in English. With this before us, we can understand why the translators of the Epistle above alluded to use the word "manners," which no longer conveys the idea intended, and which would seem to give to graceful carriage and elegant deportment an importance which belongs to more substantial qualities of mind and heart. What connection there really is between the two, morals and manners, as now understood; how it is that subjects, so dissimilar, bore the same designation; how and when each assumed its

own banner and dissolved the old association; how far they still bear traces of their former relationship; the history and philosophy of what we call manners as well as of morals;—to consider this would fill a volume.

I propose only to visit the outskirts of the vast territory and ask you to bear me company a while.

Whether we have an intuitive sense of morality or not, is a question as to which great writers differ. The arguments on both sides are ingenious and plausible.

It is undeniable that all men feel, or have felt at some time of their lives, that they possess a conscience; though it may, unfortunately, be true, as a distinguished Englishman says, "that there are infinitely more of his countrymen who are troubled by their liver than by their conscience." But all, even those whom years of rebellion have hardened against the promptings of the inward monitor, recognize the fact that there is somewhere lurking in their bosom a moral intuition of right and wrong, and that the silent voice within rebukes us when we disregard its suggestions.

On the other hand, we must admit that what is permitted or forbidden in the moral code has varied at different times with different nations and various stages of civilization.

It is manifest that in viewing this question in an abstract point of view, we must consider it outside of the fixed, definite, and controlling code promulgated by Divine authority. That guide we are bound to follow, and bound to obey, at our peril, whether its dictates meet our approbation or not, whether we consider them in accordance with natural law or not, and whether it suits us, or suits us not.

But if we look at nations that have lived before the dawn of Christianity, or that now live outside its pale, we observe an immense difference in those fundamental rules which are at this day universally accepted.

If a gentleman of extraordinary domestic tastes and appetites takes unto himself more than the single wife grudgingly allowed him, not only the law of morality condemns, but the law of the land incarcerates him, and yet he can point to the most illustrious examples of wise men—nay, to the example of the wisest of all, a king that lived in olden times—to justify him in his practice.

If our needy neighbor, unable to dig, and ashamed to beg, resorts to the only alternative left, and takes his neighbors' goods without his neighbor's permission, the stern prohibition of the Decalogue meets him, and the offended majesty of the law punishes him; and yet, if he is disposed to argue the case, he can point to the illustrious example of the Spartan heroes, whose republican system of laws ought to deserve some sympathy and admiration from us; he can easily prove that with them the crime lay not in the stealing, which was rather a commendable profession, but in the weakness that allowed detection.

So, too, filial reverence is ordained alike by human and divine law; but we can turn to numerous instances where, among the rude savage tribes of the world, those whose moral instincts should approach the nearest to nature's law, it is a pious practice for men to kill their aged and useless ancestors.

So, again, you will find that even in Christian times, the taking of interest for money was denounced as a moral transgression, and forbidden alike by the Church and by the law; and yet we have many respectable

money lenders among us; and, fortunately for all Catholic churches that I have ever known or heard of, loans are sometimes made upon the sacred edifices themselves, else we must fain say our prayers in the parks.

Strange and illogical as all this may seem, there is an explanation.

The Spartans, whom I have alluded to as encouraging theft, were a warlike people, whose sole occupation, I may say, was in warfare, and the great aim of their system was to encourage daring, cunning, enterprise, and skill. Living as they did, with no other resources than those furnished by depredation upon their neighbors, stealing was no longer stealing, but legitimate spoliation; just as you find in our modern wars invading armies and conquering legions making no scruple to carry off the portable property of defeated enemies, and yet they do not call it stealing.

So among the rude and savage tribes that I speak of, where none but the strong and hardy could obtain sustenance, and all must frequently experience the cruel pangs of hunger, children thought it humane to deprive their parents of life, rather than to allow them to struggle under the burden and privations of old age.

Again, with reference to the interest upon money, it was only when the requirements of growing commerce and the increasing wants of men demonstrated that it was unjust to expect that the possessor of capital should loan it without a return, that the lawful and regulated usage of loaning money became universal.

Slavery is another subject which strikingly illustrates the truth of what I have said as to the variable

standard of morals. It is but a decade since slavery was a household word in our land; and yet we are already beginning to wonder that in our enlightened Christian age we tolerated, as we did, a traffic in human flesh, and that the theory of Christianity which makes all men brothers in Christ, could permit the sale of that brother and his offspring on the auction block. And yet we can hardly doubt that the introduction of slavery was a humane and kindly measure. It was the practice in war to slay all prisoners, and gradually, as men's manners softened, they spared the life of that enemy, and used him as a servant; so that, cruel and wicked as we may believe slavery to be, we cannot consistently condemn its origin.

In all these matters you will observe that the morals and manners of men both concurred to the same end. It was morally right to do those things, and the fashion of doing them became prevalent. Indeed, it is not always easy to say exactly where morals end and manners begin. The dividing line between the two is often so vague and shadowy as to be almost imperceptible. What we may consider a mere fashion, may have at one time been considered a very serious matter of morality. For instance, we read in the Book of Kings that when certain unruly and disrespectful children called the prophet Elijah "Baldhead! Baldhead!" the latter at once summoned several fierce bears from adjacent woods, and they incontinently devoured these turbulent and riotous infants. We may fairly infer from the use of the epithet by the boys, and the severe reprimand inflicted by the prophet, that that epithet contained in it something seriously offensive to the well regulated mind; and yet we find no less a man than St. Clement of

Alexandria denouncing the use of wigs as wrong and immoral—in fact, he seriously questions whether certain ecclesiastical ceremonies might not be invalidated by the use of that comfortable and ornamental cover; and he puts the question, which I am entirely incompetent to solve, whether, when the hand is imposed upon a head thus covered, the blessing falls upon the cover or the thing covered.

The practice of coloring one's hair, according to one's own sense of artistic fancy, seems to be harmless enough; and yet Tertullian denounces the custom, as contravening the declaration that man cannot make one hair white or black of his own will.

The practice that ladies indulged in many centuries ago, and which is now entirely past, of painting their faces white or red to suit the caprice of themselves or their admirers, that, too, was most vigorously denounced by saintly men. When a certain lady of fashion called upon Saint Leo, to ask his intercession for obtaining the cure of her ailing son, and appeared before him decked out with all the meretricious ornaments of a fashionable dame, he rebuked her for presuming to interfere with the work of her Creator.

Do you not think [he said] that the Creator of all things, that admirable Artist who made us all, will be justly offended that you should thus accuse Him of ignorance and incapacity; for you certainly would not put black paint and white and red upon your face, did you not think that it required it, and how can you entertain that belief without charging your Maker with being incompetent to fashion you properly?

And it was only when she divested herself of all these gaudy allurements that he consented to her prayer.

Nothing can seem to us more innocent than the use of tooth-powder. But one Apuleius, having written a eulogy on tooth-powder, became conscious that he had engaged upon a very daring undertaking, and felt bound to defend himself by appealing to Nature, and insisted that she rather approved of that process,—to corroborate which, he cited the example of the crocodiles which leave the banks of the river Nile at certain stated periods, and open their mouth to a convenient bird, which quietly proceeds with its beak to clean their teeth when they need it. Of course, this cogent argument of Apuleius fixes the question; and tooth-powder may be used without scruple by good people.

But you must not think that it is only in olden times, and by Catholic saints, that these little matters of dress and fashion have been deemed serious and weighty matters of morals. If you will read even modern history, you will see that Protestant divines, too, have undertaken to regulate, though with no very marked success, the dresses and fashions and manners of the fairer sex. If you will look to the regulations drawn for the government of Geneva by the Calvinist clergy, or for the government of England by Archbishop Cranmer, or if you come down to the legislation of the Puritans and the Methodists, you will find this same subject of manners and morals so nicely intermixed that one word would cover them both. Even the Protestant clergy of France, in the time of Louis XIII., though but a small, insignificant minority, undertook to regulate these matters for the whole people. They looked upon dancing as a most ungodly amusement, and prescribed that dancing masters should be admonished by the spiritual power, and

desired to abandon their unchristian profession. They ordered that all persons should abstain from wearing gay apparel, and should arrange their hair with becoming modesty. They forbade women to paint, and they declared that if, after their injunction, any woman persisted in painting she should not be allowed to receive the Sacrament. They ordered that no person should go to a ball or a masquerade, nor ought any Christian person to look at the tricks of the conjurer, or at the game of goblets, or at the puppet show, for all such amusements should be suppressed by the magistrates, because they excited curiosity, caused expense and a waste of time. They declared that the faithful must by no means let their hair grow long, lest by so doing they end them in luxurious and lascivious curls. Their garments must be made so as to avoid the new-fangled fashions of the world. They were to have no tassels to their dresses, their gloves must be without silk or ribbons, they were to abstain from fardingales, and especially were they warned against the monstrosity of wide sleeves.—(Buckle, vol. i., 413.)

To illustrate how still further, in matters which would seem to belong exclusively to the domain of manners, morals often assert their claims with inflexible rigor, let me call your attention to the question of hats and bonnets.

The propriety of removing one's hat in the presence of ladies seems to be founded entirely upon an arbitrary though well settled rule of social decorum; and though we may condemn the violator of that regulation as a boor, and recommend that he mend his manners, we would hardly feel justified in impeaching his morals; and yet, if the same omission takes place in a sacred

building, where the solemn mysteries of our religion are being celebrated, our moral sense is shocked and outraged. We are then likely to forget the mere question of manners in our indignation at what seems gross irreverence. On the other hand, a very respectable and peculiarly amiable body of Christian people invariably retain their hats out of religious principle. Their founder happened to read in the Book of Daniel, iii., 20, that Shadrach, Meshach, and Abednego were cast into the furnace of burning fire with their coats, and their caps, and their shoes, and their garments. Impressed by this example, though perhaps with no very apparent logic, they have refused to uncover their heads since their attention was called to the important fact. As for the fairer portion of the human family, they are absolutely enjoined to cover their heads in churches; and it is wrong morally for them to remove as it is for us to retain our headgear in a building devoted to divine service. If a conscientious Hebrew is called upon to take a solemn and binding oath, he retains his hat; but if a Christian calls the Almighty to witness the truth of his statement, he takes it off—both of them thus bearing witness that the relation of the head and its covering is one of great delicacy and hedged around with fine moral distinctions.

There is perhaps no subject upon which we find fashion or manners and morals running together so closely, and none in which we find more strikingly exemplified the truth of what I have stated, viz., that the opinions upon these subjects change with time, place, and occasion, than in the matter of religious persecution. We have all read of the persecutions of the Catholic Church; and it has been the fashion to claim that upon her alone rested the charge

of having persecuted men for mere conscience' sake. I do not propose to-night to vindicate her from the accusation. That in bygone days she did seek to retain her rebellious children within her fold by threat of death and by sanctioning the infliction of cruel punishment, is true. Considering, as she did, that all that man could gain in this world was worth nothing if he lost his soul, she did seek to restrain heresy by fearful examples. That the means resorted to in those days were such as make us shudder with horror at present, cannot be denied. Exaggerated though the denunciations be of the English queen who earned for herself the name of "Bloody Mary," yet there is enough in the recital of the sufferings inflicted by her in the name of her Church to fill us with regret. Vacillating and insincere as was the chief of her victims, we are apt to forget his faults when we see him expire at Smithfield. Surpassed in number, in magnitude, and atrocity as were her tortures of Protestants, by Elizabeth of Catholics, we view the executions committed under her reign for religion's sake with horror. But when we make this admission, we have a right to say that both morals and manners then united to sanction religious persecution. That it was the order and fashion of the day; that no church that ever got a foothold in any land hesitated one instant to resort to it, is undeniable. When we see John Calvin instigating the murder of Servetus; when we see John Knox approving, if not taking part in, the assassination of Bishop Beaton; when we read of the horrors perpetrated for long years upon unoffending Catholics by the sovereigns of England, we have a right to say to those who, with exulting exaggeration, count the crimson drops on the white robes of

Mother Church, that it does not lie with them to reproach her with cruelty. If none but those without reproach will cast the first stone, all must abstain.

The old Church, we may add, had at least a fair excuse and a plausible reason to assign for persecution; and she alone of the countless sects that have undertaken to persecute those who dissented from their views can allege such excuse and such reason.

And lest I may seem partial upon this subject, let me read to you a striking passage from an author who, unwilling as he may be to recognize the claims of the Catholic Church, is at least entitled to respect for his candor:

Catholicism [he says] was an ancient church. . . . She might point to the priceless blessings she had bestowed upon humanity: to the slavery she had destroyed; to the civilization she had founded; to the many generations she had led with honor to the grave. She might show how completely her doctrines were interwoven with the social system; how dreadful would be the convulsion if they were destroyed; and how absolutely incompatible they were with the acknowledgment of private judgment. . . . But what shall we say of a Church that was but a thing of yesterday, a Church that had, as yet, no services to show, no claims upon the gratitude of mankind, a Church that was by profession a creature of private judgment, and was in reality generated by the intrigues of a corrupt court, which nevertheless suppressed by force a worship that multitudes deemed necessary for their salvation, and, by all her organs, with all her energies, persecuted those who clung to the religion of their fathers? What shall we say of a religion which comprised at most but a fourth part of the Christian world, which at the first application of private judgment shivered into countless sects, which was nevertheless so pervaded by the spirit of dogmatism that

each of these sects asserted its doctrines with the same confidence, and persecuted with the same unhesitating furiousness, as a Church that was venerable with the homage of more than twelve centuries? What shall we say of men who in the name of religious liberty deluged their land with blood, trampled on the very first principles of patriotism, calling in strangers to their assistance, and openly rejoicing in the distress of their country, and who, when they at last attained their object, immediately established a religious tyranny as absolute as that which they had subverted.

This was the attitude which, for more than a century, Protestantism uniformly presented; and so strong was its intolerance that for some time—I believe it to be truly said—there were more instances of partial toleration being advocated by Roman Catholics than by orthodox Protestants.

Sir Thomas More, though he was himself a persecutor, at least admitted the abstract excellence of toleration and extolled it in the *Utopia*.

L'Hôpital and Lord Baltimore, the Catholic founder of Maryland, were the first two legislators who uniformly compelled religious liberty when in power. And Maryland continued the solitary refuge for the oppressed of every Christian sect, until the Puritans succeeded in subverting the Catholic rule, when they basely enacted the Penal Code against those who had so nobly and so generously received them.

This statement comes not from a partial Catholic pen, but is uttered by a man who, I repeat, is no friend of the Catholic Church.

So, too, as I suggested above, the French Huguenots have undertaken at times to dictate laws of morals and manners to the French people. And I can hardly dismiss the subject without one word as to those men

who constituted, at one time, the most turbulent race of fanatical demagogues that ever brought confusion upon any country or ruin upon themselves.

No impartial man can read the early history of that politico-religious faction and deny the justice of this statement.

To corroborate my assertion, I shall abstain from Catholic sources and from any reference to Catholic authors. And I unhesitatingly declare that in the history of religious dissensions in modern times you will find nowhere so noble, generous, and magnanimous toleration on the one side, and such base and insolent ingratitude on the other:

The religion of France was, and always had been Catholic. An enormous majority of the people were Catholic. The traditions and fashions, habits and feelings were all Catholic; and yet we find a class of men, insignificant in numbers, as well as influence, taking advantage of the generous—I might almost say indiscreet—tolerance allowed them, to become rebels and traitors to their country, persecutors of those who had the power to persecute them, and finally so disturbing the peace of the whole nation, that they practically taught that toleration of themselves was impossible.

It was stipulated in the edict of Nantes that the Protestants should enjoy the full exercise of their religion, and this right they continued to possess until the reign of Louis XIV. To this there were added several other privileges such as no Catholic Government except that of France would have granted to its heretical subjects. But these things did not satisfy the desires of the Protestant clergy. They were not content to exercise their own religion unless they could also trouble the religion of others. They called upon the Government to limit the performance of those rites which the French Catholics had long revered

as emblems of the national faith. To this purpose, directly after the death of Henri IV. they held a great assembly at Saumur, in which they peremptorily demanded that no Catholic procession should be allowed in any town, or place, or castle occupied by the Protestants. As the Government did not seem inclined to countenance this monstrous proposition, these intolerant sectarians took the law into their own hands. They not only attacked the Catholic processions wherever they met them, but they subjected the priests to personal insults, and even endeavored to prevent them from administering the Sacrament to the sick. If a Catholic clergyman was engaged in burying the dead, the Protestants were sure to be present interrupting the funeral, turning the ceremonies into ridicule, and attempting by their clamor to deaden the voice of the minister so that the service performed in the church should not be heard. Nor did they always confine themselves even to such demonstrations as these. Certain towns having been perhaps imprudently placed under their control, they exercised their authority in them with the most wanton insolence. At La Rochelle, which from its importance was the second city in the Kingdom, they would not permit the Catholics to have even a single church in which to celebrate what for centuries had been the sole religion of France, and was still the religion of an enormous majority of Frenchmen. They ordered that in none of the Protestant towns should a sermon be preached by a Jesuit on any day, by any ecclesiastical person commissioned by a Bishop. They forbade any Protestant even to be present at a baptism, or at a marriage, or at a funeral if the ceremony was performed by a Catholic priest. And as if to cut off all hope of reconciliation, they not only vehemently opposed those intermarriages between two parties by which in every Christian country religious animosities have been softened, but they publicly declared that they would withhold the sacrament from any parents whose children were married into a Catholic family. . . .

When Louis XIII., in 1620, visited Pau, he was not only treated with indignity as being a heretical prince, but he found that the Protestants had not left him a single church, —not one place in which the King of France, in his own territory, could perform those devotions which he deemed necessary for his future salvation.

This [adds Mr. Buckle] was the way in which the French Protestants treated the first Catholic Government which abstained from persecuting them—the first which not only allowed them the free exercise of their religion but even advanced money to them.

This is the language used by a non-Catholic historian, and testimony without end might be accumulated to show the truth of this statement. You will find in the books of the day that when, as frequently happened, Protestant converts returned to their Church, they were mildly designated “dogs returning to the vomit of popery,” or gently admonished as “swine wallowing in the mire of idolatry,” and thus was the majority stung into driving these noisy and intolerant men from the country.

They had demonstrated that the beauty of religious Christian toleration was lost upon them, and that all that they required in order to become cruel persecutors was power.

If I have gone at some length into this subject it is because, living as we do in a country where religious persecution finds no place, we can well see how different is the standard of morals and manners in this particular. Deeds that we would now look upon, whether Catholics or Protestants, with horror, were then regarded not only as the natural dictates of earnest religious sentiment, but as acts of virtue and of mercy.

If I say that the spirit of religious persecution has

almost died out from our modern society, I am not unmindful of the relentless persecution inflicted at this moment upon good and venerable men for conscience' sake in another land. But even there you will observe that it is not one religion seeking to exclude another, but it is the old fight between the state, claiming to be preëminent, absolute, all-powerful, and conscience, bearing and suffering everything to maintain its rights. The day is not far distant, I think, when the whole Christian world will recognize the fact that in the oppression of the Catholic Church now going on in Germany, the Catholic prelates who are suffering imprisonment and indignity are the champions not only of the rights of that Church, but the asserters of the sanctity of the human conscience; and it will be recognized before long, I think, that it is not only the old mother Church that is assailed, but the war upon her is upon all who try to draw a line limiting the power of Cæsar, and who venture to assert that while rendering unto Cæsar what belongs to Cæsar we should also render unto God what belongs to God.

You may, perhaps, think from what I have heretofore said that it is only with the weightier subject of morals that the good men of bygone times have been concerned, and that mere outward politeness was a subject entirely beneath them. But this I can demonstrate is a great mistake, and I will briefly show you that even great saints have not disdained the lighter grace of courtesy.

When St. Anthony was living in the desert, it was reported to him that there was a saint somewhere even greater than himself. It would seem from his action upon receiving that intimation that St. Anthony had not yet by vigils and by fasting, by solitude

and by privation, driven all human leaven out of his heart. He at once started to discover who that saint could be. As it would have been highly difficult upon the very slight intimation that he had received to find the person of whom he was in quest, he was very much pleased, no doubt, to meet a little man with horns and goat's feet to point out the way to his destination. He followed his guide until he reached a cell occupied by St. Paul, a hermit. St. Paul had lived many years in saintly solitude, and fearing the contamination of the outer world, and not knowing the excellence of his visitor, at first refused to receive him. Being at last prevailed upon, he yielded to the impulse of curiosity, and asked him what there was going on in the world, whether there was much building in the towns, whether there were any idolaters still living, etc. While this colloquy was proceeding to the mutual satisfaction of both, a crow appeared which bore a loaf of bread in its beak; whereupon St. Paul at once observed that he had done quite well to admit his visitor, as was evidenced by the fact that heretofore the bird had only carried half a loaf but on this occasion had produced a whole one, evidently meaning that the loaf should be shared by the visitor.

The two pious men having given thanks sat down to share their repast, but a very serious difficulty at once arose. Who was to break the loaf before the other? St. Paul courteously insisted that his visitor should have the priority, according to the most familiar rules of elegant hospitality. St. Anthony, however, insisted, with proper deference, that St. Paul should commence, as St. Paul was then 113, and St. Anthony comparatively young (he was only 90 years old). So scrupulous was each to do justice to the other that

they discussed the matter the whole afternoon, until at last, as the shades of evening gathered about them, a happy inspiration released them from their dilemma, viz., that each should hold an end of the loaf and that they should pull together. This settled the matter to the satisfaction of both. Here, then, you observe an instance of scrupulous politeness, at a time, and on an occasion, and between men, where we might not expect it.

Although it is not exactly in point, I will finish this pious legend where it ought to end, by adding that St. Paul soon died, and his new friend, being anxious but unable to give him Christian burial, was greatly relieved by the appearance of two lions who, with their paws, dug a grave, deposited the body into it, and, having raised a howl of lamentation, prostrated themselves before the surviving saint, asking him, as far as in their language they could ask him, for his blessing.

There are other instances, too, of this gentle spirit of courtesy, the courtesy of the true kind, for it contains the element of charity. When St. Macarius was sick (we read in the history of the monks), some friendly visitor left him a bunch of grapes, but the saint, thinking more of others than of himself, gave it to another hermit, who in turn passed them to still another, and finally the same bunch of grapes, having made the circuit of the entire desert, was returned to St. Macarius.

So, too, St. Avitus being on a visit to St. Martion, the latter saint placed bread before him and invited him to eat. But St. Avitus refused, averring his custom never to taste food until after sunset. St. Martion, however, insisted, and gave as an excuse that he was unable to defer his own repast and implored his

guest, for that once, to break his habit, and being refused, exclaimed, "Alas! I am filled with anguish that you have come here to see a wise man and a saint and you find a glutton!" St. Avitus was then grieved, and said he would rather even eat flesh than hear such words, and he sat down as desired. St. Martion then declared that his custom was the same as that of his guest, "but," he added, "we know that charity is better than fasting, for charity is enjoined by the Divine law, and fasting is left in our power and will."

How beautifully blended do we here find morals and manners!

When St. Epiphanius, having invited St. Hilarion to his cell, placed before him a dish of fowl, "Pardon me, father," said St. Hilarion, "but since I have become a monk I have never eaten flesh." "And I," said St. Epiphanius, "since I have become a monk have never suffered the sun to go down upon my wrath." "Your rule," replied the other, "is more excellent than mine."

These instances, I think, will serve to establish the truth of my assertion as to saintly courtesy.

The practice of ejaculating a brief and courteous prayer when a person sneezes in our presence, although it has well-nigh died from among us, still prevails among the Latin races. With us, who are more practical than sentimental, the fact that our neighbor sneezes merely suggests cold in the head and suitable remedies to cure the affliction. But when the subject is considered in all its bearings it becomes quite respectable, I may say classical and venerable. Few men and women sneeze with a full appreciation of the importance of the act. Some writers, seeking to

explain the practice of saluting, go back to the time of Gregory the Great, and show that during his pontificate an epidemic prevailed which proved deadly to all who sneezed. This, however, falls far short of the justice due the ancient custom, for Pope Gregory only lived some 1200 years ago, and we read that as far back as the Roman emperor Tiberius this pious and courteous practice was generally observed and no man of self-respect and well informed as to the morals and manners of the day would have failed to ejaculate "Jupiter," or "Jove," when his friend or even himself sneezed. We have a proof of this in an old Greek epigram which is translated thus:

Proclus with his hand his nose can never wipe—
His hand too little is his nose to gripe.
He sneezing calls not Jove, because? he hears
Himself not sneeze, the sound's far from his ears.

Antique as this makes the practice, the rabbinical accounts invest it with even greater age. They say that sneezing was a mortal sign even from the first man until it was taken off by the earnest supplication of Jacob, and from that time, as a special acknowledgment, was continued on all occasions of sneezing.

Nor was the practice of sneezing, or, as Sir Thomas Browne more elegantly denominates it, the "custom of sternutation," merely an occasion of polite or religious demonstration. It also conveyed very solemn warnings if we are to believe ancient histories. As far back as the times of Homer, who died so long ago that learned men are now uncertain whether or not he was ever born, an Athenian captain would have retired from battle because his boatman sneezed, while it is said that in those ancient days men were wont to go

to bed again if they sneezed while they put on their shoe. So Aristotle demonstrates that sneezing from noon unto midnight was very good, but from night to noon unlucky, while another Greek writer observes that sneezing to the left hand was unlucky, but prosperous unto the right. All of which shows that no man of well-balanced mind should sneeze lightly, and without a careful inspection of the surrounding circumstances.

Before closing I desire to call your attention to the subject of duelling. Nothing, I think, can more forcibly illustrate what I have sought to prove than the consideration of this matter of private combat. One of the most serious offences known to our law is that of duelling. The penalties inflicted by the code of all Anglo-Saxon countries are of the severest kind. To slay a man in a duel is akin to deliberate murder. The stain of shedding a brother's blood without justification can only be atoned for by the severest expiation. Public opinion in this country has become utterly intolerant of this barbarous and illogical mode of settling differences, even when the parties call themselves gentlemen! And yet if we go back to the origin of the practice we find that it sprang from a deep sense of religious sentiment. Not only the manners but the morals of the past sanctioned—I may say sanctified—the practice. The Church itself looked with favor upon this mode of adjusting variances and of righting the oppressed, while the laws then provided for and regulated this mode of bringing and trying suits. It was supposed that the innocent man could not fail to receive the aid of the Almighty, and who could withstand Him? What test could be surer, safer, and more expeditious, when men not only

possessed full confidence in the justice of God, but unhesitatingly assumed that they could at their will call Him to interfere in their quarrels in a manner and at a time of their own choosing? Faith in this divine aid might well give the one more than human courage and strength and might well dismay the other. But in time men found that they could not summon Him from His throne at their call, and that He chose His own good time and His own means of visiting the guilty with punishment. That the innocent frequently fell was, in time, discovered, and the Church, long before secular laws interfered to prevent what had become a barbarous and murderous practice, put her veto upon duelling as a mode of administering justice. Even Blackstone says (and he is no friend of the Church), "To give it its due praise, we find the canon law very early declaring against trial by battel [ordeal] as being the fabric of the devil and as against the divine precept 'Thou shalt not tempt the Lord thy God.' "

From that time it became bad in morals, though it remained good in manners, to engage in single combat, often for the most trifling causes. Of late years only has the code of manners contained a provision to the contrary effect, and as morals and manners firmly united to sanction, so they are now both allied to condemn a bloody and senseless method of settling disputes, or a cowardly device for punishing a less skillful enemy.

And yet the traces of the old practice are still found in modern morals and manners. In France, for instance, the custom prevailed that *villeins*, as all of low birth were called, should fight with uncovered face, while the men of gentle blood wore a visor down. Hence only *villeins* could be struck on the face, and

hence to strike a man on the face was to treat him as a *villein* and inflict on him a very gross outrage. The traces of this distinction are still seen in the feeling that a blow on the cheek is an insult of peculiar indignity.

So, too, the *villeins* fought with a stick or staff; hence to strike a man with a cane was to treat him as a *villein*, another form of aggravated injury, which ordinary methods of retaliation were insufficient to punish.

But to us, the most singular fact connected with this ancient method of conducting law suits is that, after the old law that allowed and provided for trial by "battel" had slept uninterruptedly on the statute books for many centuries, within the memory of many now living, a defendant, on being sued in England, boldly flung down his glove before a solemn English court and defied his adversary to single combat—a summary and inexpensive, though unusual, method of getting at the facts—and the greatest judges of England were compelled to acknowledge that the law never having been abrogated was still the law, that the party was entitled to his "battel," and that they were powerless to deprive him of his right.

Fortunately for the cause of both morals and manners, the fiery litigant was prevailed upon to conform to modern notions, and the judges lost the spectacle which, from their opinion, I feel bound to say, they seemed rather anxious to enjoy.

But if the practice of duelling is now condemned by morality and dying out of our manners, there are certain races of men among whom the love for that dangerous exercise still exists. In Latin countries the most stringent laws have been passed on the subject

without success. In Ireland, where duelling was long the most delightful of pastimes, severe legislation has but partially succeeded. An Irish judge within a few years past reflected the feelings of many when he said to the jury: "I am bound by law to charge you that such a practice is highly criminal, but I also feel bound to add that I never saw a fairer joel in my life!"

The changed condition of woman in the social and domestic world forcibly exemplifies my statement as to the variable standard of morals and manners. From a state of comparative slavery, and oftentimes of absolute degradation, she has been raised to a condition of dignity and honor. The laws of modern times have been altered with a view to her protection and benefit. She may compete with the inferior being who is sarcastically denominated her lord and master, in nearly all the walks of life—art, science, literature, the learned professions—and beat him in all. She may receive and retain the fruits of her earnings, and the law, no longer taking them from her to enrich or support the lazy, idle, or vagabond husband, jealously watches his interference. It compels him to maintain her or go to jail. It allows, nay, encourages her, in living on his substance, and keeping her own. So far does this kind and generous legislation proceed in the direction of protecting the woman that she is allowed the utmost latitude in oppressing her husband, who may well wonder at times if he has rights that she is bound to respect. She may acquire and own property without let or hindrance. She may create debts as freely as she likes, but when it comes to payment she has but mildly to suggest that she is a married woman and does n't care to pay, and of a sudden her married condition is one of priceless value. If the unfortunate

creditor does succeed, after years of expensive litigation, to compel payment, she is justly indignant at the iniquity thus heaped on a defenceless woman, and clamors for more equal laws. I know that it is but a few years since an English judge, who was no doubt born and bred somewhere in the middle ages, decided that a British husband still possessed the right to inflict corporal chastisement on his wife; he cautiously added, "He must not use a stick larger than his finger." The British nation, naturally anxious to ascertain the precise limits within which marital expostulation might be exercised, addressed him a polite note inquiring the precise size of the judicial finger. That question he was not, I think, able to answer with mathematical accuracy, and there the matter rests in Great Britain. But here, I may proudly say, she is not troubled with any such nice discrimination. If he beats her, she sends him to prison, and makes him support her in the meanwhile. If she beats him, and he goes to law, the verdict is "served him right" for being a brute. And finally, if she gets tired of his company and has no special cause to allege against him, she goes west, at his expense, of course, and gets a divorce. In fact, I may safely say that no prudent man who cares for his wife would allow her to go west without him.

So complete is the change in the respective relations of the parties to the marriage contract that we may reasonably expect to see at no very distant day laws enacted for the more effectual protection of the person, property, and rights of married men. This, too, will very forcibly illustrate, when it does occur, the changeable standard of morals and manners.

I ought not to close without a reference at least to

that curious institution wherein the morals and manners of a bygone age seem so strangely blended. I speak of chivalry, in which we can observe the germs of our modern civilization struggling for life. How strange it all seems! What a mixture of fable and reality, of the sublime and the grotesque! What a brilliant though unreal pageant "Orlando the Furious" striking off the heads and limbs of his foes, so that they fall about him like rain; "Richard the Lion-hearted" dealing those ponderous blows that still ring through ages in our ears; Bayard, the knight without fear and without reproach, and more real and loveable than all, the good, dear knight of La Mancha. How we follow him through his wondrous adventures, his fearful contest with the windmill and desperate onslaught on the flocks of sheep, until the end approaches, and, the clouds that obscure his mind being lifted by the hand of approaching death, he lies down forever—he and the old poetry dying together!

Lack-a-day, dear sir [cried honest Sancho, blubbing, as his master began to settle his affairs], do not die—take my advice and live many years upon the face of the earth, for the greatest madness a man can be guilty of in this life is to let himself die outright, without being slain by any person whatever or destroyed by any other weapon than the hands of melancholy.

But the brave knight was not to be moved by such arguments. "Gentlemen," he said to his squire and those about him, "let us proceed fair and softly, without looking for this year's birds in last year's nests. I was mad, but now am in my right senses. I was Don Quixote de la Mancha, but now I am Alonzo Quixmo, the Good." And having dictated his will he died,

so wisely and bravely that his biographer might truly say

That in his life tho' counted mad,
He in his perfect senses died.

Nevertheless, says that same biographer, his niece ate her victuals, the housekeeper drank to the repose of his soul, and even Sancho cherished his little carcase, for, he wisely adds, the prospect of succession moderates that affliction which an heir ought to feel at the death of the testator. From all which I infer that there are certain respects in which manners and morals do not change.

And now I must close, with the hope that I have not quite failed to show you that morals and manners are so closely allied, in nature and by tradition, that you can hardly disregard the one without offending the other. They are both near relatives of charity, outside of whose gentle influence they both lose their true character and real virtue, so that, rightly understood, the precept is well worth keeping, whether you follow King James or adopt Archbishop Kenrick—the safer way, if I may offer counsel, being to follow them both.





XV

LYING AS A FINE ART¹

PERHAPS it may be no more than justice to the excellent institution which has done me the honor to invite me here to-night, to begin with the positive assurance that the Catholic Union is *not*, in any sense, a society for the protection or encouragement of the fine arts in general, or of the art to which I allude, in particular.

Indeed, after examining its constitution and investigating the fundamental principles of its organization, I think I may truthfully say that it is of the reverse order, and that the faithful accomplishment of its objects will very greatly tend to the destruction of that art of which I am to speak this evening. Its chief object is the inculcation and protection of sound Catholic principles, and I need hardly say to this audience that at the bottom of this is the inculcation of truth.

I have been incited to adopt this title for my lecture this evening, not only because after some reflection I have thought that it sounded well, but because a very celebrated writer whose genius was equalled, and perhaps marred, by his eccentricities, once wrote an

¹ An address at Cooper Union under the auspices of the "Catholic Union."—1873.

essay which he entitled "Murder as a Fine Art"; and it has occurred to me that, considered from an esthetic or artistic point of view, if the art of destroying our neighbor's life is entitled to particular mention and even a qualified sort of admiration when it is accompanied with pre-eminent skill, much more so the art of lying, for, after all, the murderer can only take away that which must eventually and certainly be lost. He anticipates the destroying effect of time by a few days or months or years. All that he is able to do is to send his brother to his grave at an earlier moment than Nature intended. But he who deals in lies has a much wider field and a much grander scope for the exercise of his abilities. Not only a human life can he take away, but he may destroy character, fame, reputation, glory, happiness. He may ruin empires. He may subvert the peace of kingdoms. He may shake the foundations of the best and noblest institutions. He may sow the seeds of the most widespread calamity and wretchedness. And when we consider the extent to which he may carry his powers of destruction, if he sets artistically and earnestly to work, we can only exclaim with an inspired writer: "Behold how great a matter a little fire kindleth."

And then, too, the author to whom I have just alluded, and who has viewed Murder as a fine art, speaks with glowing admiration of the various forms which that art has assumed. How much more varied and attractive and wonderfully ingenious are the shapes which the father of lies has been able to give to his pet productions! He may call to his assistance resources which none but he can command, and which even he can only command when he starts the lie upon its mission. All the arts that are known to men will

act as handmaids to assist in perfecting the work. Monuments of stone, tablets of brass, the poet's fancy, the historian's skill, the painter's cunning, and the sculptor's genius will all come forward when summoned. Nay, even the solemn legislator, the great potentate, and the grave philosopher—they, too, at his bidding, spring forward to embellish, adorn, and make imperishable the lie.

It is true that murder, considered purely as I have represented it, may boast of its great antiquity. The world was still young and fresh from the hands of its Maker when the first murderer shed his brother's blood. But even before that the pure air of the earthly paradise had been polluted by a lie. Before that the great master, nay, the very father of lies, first gave an instance of his power. It was in that fair garden that he deceived the first woman, and that she misled the first man. But upon this picture I do not propose to dwell, and I only mention it to show the great antiquity of this oldest of the arts. It is not a pleasant picture to dwell upon, for, after all, the noblest of us look to this woman and this man as our ancestors, and if we owe them nothing else, we owe them what good Sir Thomas Browne held that we owe to the pope, "at least the duty of good language."

The lesson taught in the smiling garden of Eden was not taught in vain. It continued to find imitators and admirers, and to spread over the world, until the disciples and students became so numerous that the prophet king was constrained to exclaim, "All men are liars." And many centuries later, we find that one of the greatest of the apostles, speaking of the inhabitants of a certain island, and lamenting the condition into which they had fallen, exclaimed, "They are all liars."

It is true that this allegation is less sweeping than the other, for he spoke of one little insignificant island and did not embrace the whole universe in his statement. Whatever comfort or consolation there may be in that reflection you are welcome to. He did not state that the inhabitants of all islands were liars, nor did he say they were not.

Before proceeding any farther with the discussion of my subject, it is well to ascertain precisely what we mean when we talk of a lie. The common idea is that a lie is an intentionally false statement. I am hardly willing to accept this definition. It is popularly correct, but like many other popular definitions it is neither morally nor theologically true. If any false statement, intentionally false, be a lie, then we have some very respectable members of a disreputable family. We have the heroic lie, the charitable lie, the social lie, and many others that certainly rebel at the paternity that is assigned to them. But whether they are entitled to the name or not, they do not reach that point of artistic excellence which entitles them to much consideration at my hands to-night. They are at best the mere manifestation of the art in its most rudimentary condition. They are dictated often by loving friendship, social necessity, and kindly feeling. They lack the true smack of genius. They do not bear the signature of the king and prince of liars. They are not tainted with some selfish hope or selfish fear, or at least some desire and expectation of doing an injury or an injustice, and theologians and moralists concur in saying that the very essence of a lie is injustice. It may be well, however, to give you an instance of the *Heroic Lie*, if we must so call it. I select one of the few that have come down to us.

It was in the bloody days of the French Revolution. Under pretence of sweeping away all shams and hypocrisy the great artist in the department of falsehood had taken things in his own hand and had started an army of lies which kept on multiplying and increasing each day that it lived. Then, indeed, the admirers of artistic murder and artistic falsehood might well be satisfied. Hand in hand they walked the fair land of France, and for a time held undisputed sway. They were not more numerous, perhaps, than their predecessors, but their giants took the place of pygmies. A father and son were arrested upon some charge—charges were easily made, were easily proved, and more easily punished. They were to defend themselves before one of the sanguinary tribunals whose judgment almost always ended in death. The son, perhaps by a refinement of cruelty, was tried the first. His doom was soon fixed, and the court adjourned in the evening with the usual formalities requiring that he should be executed the next morning. The father's trial was postponed, perhaps through indifference, or more probably that the judges might dine. It may be in order that he might suffer a worse punishment than death—that of being present at the execution of his boy. They passed their last night together in loving conversation, and towards dawn, but a few moments before the fatal cart arrived, the son fell asleep. His name was soon called, and the father answered, "It is I; here I am," and stealthily leaving his sleeping son he was taken off to execution, the last word upon his lips being a lie—if, indeed, I repeat, that falsehood which I class among the heroic lies be entitled to that designation. He was executed and his son lived many years to tell the story with

moistened eyes; and the father's memory lives embalmed in that falsehood.

I have cited this as an instance of what I would not consider an artistic specimen of prevarication. If there was any sin in that falsehood, we can only hope that, like "Uncle Toby's oath," the recording angel, as he wrote it, blotted it out with a tear. But I have no hesitation in giving such an instance as this, nay, in holding it out for admiration as an example; for if only those will depart from truth whose mendacity is directed to saving the lives of others at the expense of their own, then, indeed, will the race soon die out, and all reproach upon the practitioners of the art be absorbed in admiration and gratitude. It will soon be added to the catalogue of the lost arts.

The falsehood that I speak of as an artistic one must be accompanied, as I have suggested, by treachery, cowardice, injustice, blasphemy, or selfishness, and these must be beautified and exalted by the hues and colors of truth.

They must as far as possible be attended by plausible circumstances, eloquence of statement, and reasonable probability. They must be adapted to the hearer, to the time, to the place; and when these concur, then does the lie deserve to be ranked among the fine specimens of the art. If some, at least, of these elements are not contained in the subject that may be examined, you have an instance of vulgar mendacity, but nothing that belongs to that group of exquisite productions that have been numerous in every age, but which have never been so common as since they enlisted as their handmaid the accessories of printing presses and electric wires.

I ought, perhaps, to explain, in connection with this,

that I do not mean that all great liars have given a careful attention or study to the subject. Some men attain greatness and pre-eminence by labor, by years, perhaps, of toil, and by constant practice, whereas the real artist and child of genius at one jump reaches the very pinnacle. Many men are born great in this branch of art as in others. Their unaided efforts have appeared wonderful at times, and as it has finally been discovered that absolute license to lie is not unaccompanied with danger to society, scientific men have come forward, have diagnosed it, have recognized it, classed it, and labelled it, and called it "*pseudomania*." This mania, like many others, is apt to exist only in a certain class of cases. Where it affects Dives in purple and fine linen the scientific man or accomplished physician is called in, and with a very serious air, befitting so solemn an occasion, he pronounces his patient in need of treatment. But if Lazarus in his rags is afflicted with the same disorder, science can do nothing for him except to send him to the penitentiary and the workhouse whenever his mendacious disposition assumes a practical form, to the detriment of his neighbor. The same disease, you will see, requires a physician or a policeman according to the circumstances of the patient.

I would not encourage any man, however, even if he has the means to employ the best medical skill, to indulge his fancy in unlimited fabrication. For it has been discovered that scientific indulgence in this particular might possibly be injurious to the best interests of the community. And I observe that the most recent and most esteemed works upon this subject suggest that although there is undoubtedly such a disease as pseudomania, or an irresistible propensity

to lie, it can be cured by a judicious application of the rod, and a more or less extensive term of imprisonment.—(Wharton & Stillé, *Medical Jurisprudence*.)

Dr. Rush, among others, traces the origin of this mental disorder to voluntary adoption, but this, he thinks, may be cured. "Lying," he says, "is generally the result of a defective education. It is voluntary in childhood, and becomes involuntary, like certain muscular actions, from habit. The only remedy is bodily pain, inflicted by the rod, confinement or abstinence from food. It would be a mistake to suppose that even when it has become an involuntary and almost uncontrollable habit falsehood brings with it no responsibility. The law will not permit an habitual liar to say that he got goods by false pretences because he cannot help lying, or that he deceived his neighbor in any other way because the nature of his disorder was such that he was incapacitated from telling the truth; but it wisely declares that if a man is habitually false this habit is only viewed as aggravating his guilt, so that after all, the lucubrations of wise and learned men are much less injurious in this direction than might at first sight be supposed.

If the time and occasion allowed, it might here be interesting to stop and inquire how far a taste for lying is a natural or an acquired one.

Jeremy Bentham, a philosopher of great celebrity, holds that it is easier for men to speak the truth, and therefore they are more inclined to do so than to utter falsehood. Carlyle is of the same opinion, and says that "man everywhere is the born enemy of lies."

How far this may be true I do not care to investigate, nor will I express an opinion on the subject. It is flattering to our fallen nature to believe that we are

born only with good and honest instincts, and that the natural condition of our moral being is that of rectitude; but while admitting this, if you please, in theory, it is safe to proceed upon the opposite assumption in practice. I fear that if the children about us are allowed to follow the instincts of their nature, without a judicious care to instruct them in the higher duties they are called on to perform, their natural propensities to virtue will soon disappear. That virtue will be rewarded, that vice will be punished, that crime cannot escape retribution, are maxims which it were well to instill into their youthful minds, even before they learn the rule of three. I think that I have not seen exceptionally bad cases of infantine human nature but it always seemed to me that it came naturally to the average boy to rob the neighboring orchard, or even invade the sacred precincts of his neighbor's henroost, and that he only discovered the enormity of the offense and the virtue of abstinence when a judicious application of the usual instrument of torture inculcated the lesson.

It is particularly when we study what is called history, or the narration of past events, that we find the art of lying assuming its most beautiful and artistic development. Indeed it has become a very serious question of late with students of history whether the presumption was not rather against any historical statement than in its favor; and I am inclined to believe that if a balance could be struck between what we absolutely know to be false of the statements of history and what we believe to be true, the balance would be very greatly on the side of falsehood.

It was perhaps a bit of irony on the part of the ancients to present the Muse of history as a woman;

but whatever may be the sex of the divinity that presides over historical narratives, it is certainly true that with him, or her, or it, truth is stranger than fiction. I need hardly say that I omit from this rather sweeping assertion the books of Holy Writ, but I think I may, without irreverence, cite them in my favor to prove the unreliability of any human testimony. A quaint and learned author says that, man being deluded before the flood, it is no wonder the conceptions of our first parents were deceitful, and they could scarce speak without error; and he makes the very remarkable statement (which he himself says that no man that he knows ever has observed) that in the recital of the Scripture before the flood there is but one speech delivered by man wherein there is not an error, or, as he terms it, erroneous conception—one, too, he adds, strictly examined, most heinously injurious to truth. The pen of Moses, he says, is brief in the account before the flood, and his speeches recorded are but six. These six, on examination, are found to contain either a gross mistake or a very unsatisfactory reply, or impious error, or open impudence, as in the speech of Cain, where, upon the demand of God, "Where is thy brother?" he answered, "I know not"; superadding to the guilt of falsehood the folly of returning a lie unto his Maker, thereby denying the omniscient power of God from whom nothing can be concealed. But I will not dwell upon this very interesting subject, preferring to refer you to the work itself: Sir Thomas Browne's *Vulgar and Common Errors*. It is full of learning, full of interest, and of what the author, with great clearness, terms "illustrative argumentation to induce their enthymemes upon the people."

I shall not undertake to explain what "inducing enthymemes" may mean. In the first place, because you may happen to understand the expression, and then explanation would be superfluous; and in the second place, because I do not quite understand it myself.

The difficulty of illustrating my broad statement as to the mendacity of history consists not so much in the scarcity as in the over-abundance of my material, and it would be sufficient for me to open almost any historical work at almost any page and say to you, "This story is untrue." Sir Robert Walpole, on a certain occasion, when his secretary proposed to read to him some work on history, refused, saying that he preferred hearing something that was true, whereas history he knew to be false. Herodotus, who has been called the father of history, has also been denounced as the father of lies, and yet Macaulay considers him one of the most reliable and truthful of ancient historians. Indeed, if I were called upon to name, without further preparation, one single important historical narrative which I can accept as truthful, I know of none that I could cite with entire and absolute confidence except that dramatic, moral, and patriotic history which represents the illustrious father of his country in the act of freely admitting to his angry father that he had destroyed one of his choicest cherry trees with his hatchet. It would be almost treason, which the English law declares to be the sum of all villainies, to deny the exact truth of this narration, and therefore I am quite willing to let it stand, not only as an illustrious instance of truth-telling in high places, but also as an exception to the rule which I have laid down, of general historical inaccuracy. I confess that so far as the moral of the story goes it seems to me to be an

extremely bad one, and I have always considered that the lesson sought to be inculcated had entirely failed of its object. It seems to be assumed that the absence of lying in a boy is most meritorious, and that the fact that a child failed to tell a gross, patent, flagrant falsehood to his father was one of those heroic and meritorious actions which could only be rewarded with the presidency of the United States. This seems to me very much as though a child were to be lauded—extravagantly lauded—because with filial devotion he abstained from killing his grandmother, or blowing up his grandfather with nitro-glycerine; both which things it would be undeniably wrong to do, but abstinence from which does not seem to me to entitle the youthful practitioner in the ways of virtue to special mention or distinction.

I will now endeavor to select a few of these historical fallacies which have been so carefully prepared or so delicately nurtured, fostered, and finished as to entitle them to a prominent place in the gallery of the art.

Among all the fictions that history has narrated to an eager and credulous public, there is no class which unites, to the same degree, all the elements of splendid and masterly mendacity as that which we might call the anti-church or anti-papal lie. We find instances of this in every shape—in portly volumes, in magnificent monuments, in sober laws, or in venomous pamphlets. Take, for instance, the monument that is known to many here present, called the London Monument—a column in the city of London which has existed some two hundred years, and which bears these words:

This monument is erected in memory of the burning of the Protestant City by the Popish faction in September,

A.D. 1666, for the destruction of the Protestant rule and of old English liberty, and for the introduction of popery and slavery, but the fury of the papists is not yet satisfied.

That monument still stands. It was torn down during the reign of James II., but his successor, William, restored it.

That the statement is a lie, historically speaking, that the expression with which it closes is not only a lie but a gratuitous insult to many faithful British subjects, no one denies. That the so-called popish faction had nothing whatever to do with the terrible calamity that visited London at that time, all are ready to admit; yet the monument still stands, and, as Pope expressed it,

Like some tall bully lifts its head and lies.

Burnet, it is true, the English bishop, says that Hubert, a French papist, confessed that he began the fire; but it turns out, and is admitted by Protestant historians, that Hubert was not a papist at all. This, however, is a matter of very little consequence. Mr. Hubert, or Monsieur Hubert, may have called himself what he liked. If he undertook to destroy the city of London he was no Catholic and a very bad Protestant, or let us more charitably suppose a poor maniac, whose mortal malady entitled him to compassionate incarceration. I leave this, however, as a good instance of the historical and monumental lie combined into one.

So, too, there is the twin brother of this wicked fiction—not only the historical and monumental combined, but a little savor of blasphemy added. And this is the prayer for the 5th of November in the English Prayer Book, wherein good people who read and

pray from that book are taught to call all Catholics indiscriminately their blood-thirsty enemies, and to invite the vengeance of Heaven upon them for the attempted perpetration of a crime denounced by their faith, condemned by their Church, and abhorrent to their loyalty.

Before leaving the subject of the monumental lie, I might adduce many instances in ancient and modern times of tall and stately monuments that record the benefactions of great and good men, who were neither great nor good; and I might even allude to the common inscriptions upon the headstones of the departed, on which so many virtues are ascribed to those who have gone before, in which it so uniformly appears that the dead were all good and virtuous, that we must think either with a sense of discouragement that human nature has sadly changed since they fell asleep, or else we must believe that our proneness to fallacy invades even the sanctuary of the dead and writes a falsehood upon their last resting-place. But it is pleasanter to attribute this to a more creditable part of our nature—a tenderness which, after death has put its seal upon the life of those we love, only remembers the kindly and gentle virtues and leaves their failings, if they had any, to them and to their Judge.

A very neat illustration of the anti-papal lie is to be found in the story of Pope John VIII. If you will examine works published say half a century ago you will find it gravely stated that this pope, who died in the year 854 (Mosheim), was not what he professed to be, a man, but that he was in fact a woman. I can hardly say that this fiction originated as a lie, for at the time that it was first started there was but one

Church, and there is no special reason for believing that the originator of this fiction undertook to bring any particular discredit upon his faith. In after times, however, this story was eagerly seized upon, enlarged, embellished, revamped, and reframed, until it became an extremely beautiful specimen of the art. I am not sure that even now you may not find some pious and harmless lunatic as fully satisfied that Pope John was not John at all, but Joan, as of any other well-established fact in the anti-popery catalogue.

Perhaps there may be seen nothing at all discreditable to the papal office, at least to those who are taught to see in woman the purest and best part of human nature, in the supposition that a woman ever filled that chair. But the Church, following the direction and advice of the great apostle whom I have already cited, has always been extremely reluctant to permit even the best of women to speak in Church. And it must have been manifest that a very serious blow would be dealt at the papal institution if it could be shown that a woman had ever occupied the papal throne.

As the strength of a chain is the strength of its weakest link and no more, so the glorious boast of an unbroken succession would be forever lost. This may account for the protracted existence of the Pope Joan fiction.

When we consider, however, the difficulties under which the historian labors in the performance of his duty, we must extend to him a large amount of charity. Not only must he or should he contend against and set aside his own prejudice, feelings, and opinions, moral, religious, and political, but he must bring the impartiality of a judge to bear upon the selection of his material.

When a long period of time has gone by since the occurrence of the important event he seeks to trace, and the atmosphere in which he writes is comparatively freed from the prejudices of the hour, his task may to some extent appear comparatively easy; but this facility to get at the real truth by a dispassionate examination of all authorities that he may have at hand is, after all, but illusory, for he must of necessity go back in his investigations to those who lived contemporaneously with the events which he describes, and there he cannot but find bias, prejudice, fixed opinions, partial judgments, and falsehood.

Take, for instance, the case of the historian who, after our generation has passed away, will undertake to trace a narrative of the civil war that desolated our own land but a few years ago. In the absence of the actors and witnesses in that dreary conflict, he will resort to the publications of the day. If he seeks to describe the bloody battle say of Cow Ridge, he finds among the most reliable of his authorities the *Buncombe Gazette and Trumpet Blast of Freedom*, published in a loyal northern city, containing a special letter from its special correspondent, describing in glowing and enthusiastic terms the utter rout, confusion, and destruction of the rebel army. That correspondent graphically says: "The God of Battles has at last enabled the Northern Army to triumph over this wicked rebellion. The traitors who composed the Southern Army have fled in dismay, and the valiant troops who fought in behalf of freedom have at last struck a final blow for liberty and their country."

He then turns say to the *Slaveholders' Bugle and Journal of Liberty*, published a few miles south of Mason and Dixon's line on the very same day, and

containing a special letter from its special correspondent, as to that particular battle: "The hour of victory for the Southern Army has at last sounded. The God of Battles has at last spoken in thunder tones in our favor. The Northern horde of barbarous invaders has been driven in confusion back from our sacred soil. Our band of heroes, though contending against fearful odds, has utterly and gloriously defeated the enemy. Our victorious generals are now on the very eve of striking the final blow, and affixing the seal of victory to the triumph of our glorious cause."

And so on. The historical investigator will find ample authority to sustain whatever view of the case he may feel inclined to take. He may be a little puzzled to explain the official surrender of the one side after such a series of triumphs as he has read of in the *Slaveholders' Journal of Liberty*, and on the other hand he will not very easily understand why a contest which was so surely to have been settled in ninety days lasted so many bloody years.

The city papers reported, a short time since, an eloquent discourse by a reverend gentleman who seems to be afflicted with the now very common disorder which I might term, for want of a better expression, "Jesuitophobia," in other words, a serious and patriotic apprehension that the brothers of the order of Jesuits are about to overturn all our glorious institutions and hand over the whole country, bound hand and foot, to their general, who resides in Rome, after having, of course, delivered over a few dozen heretics to the secular arm for instant combustion.

In order aptly to illustrate the formidable character of this order, and to give an instance of the many atrocities which are to be laid to their charge, he cited

the case of Joan of Arc. You may wonder, perhaps, what Joan of Arc has to do with the Jesuits, but he explained it in a very satisfactory manner: The dreadful tragedy in which that pure maid expiated the only crime which she had committed, viz., the saving of her country, would never have been perpetrated had it not been for the machinations of that dark and mysterious body of men. They, and they only, are responsible to history and to posterity for this dreadful event.

Now it happens that Joan of Arc was executed (if she ever was executed) in the year 1431, and that the famous order which disturbs the dreams of this pious gentleman was founded about one hundred years after that event. Of course so insignificant a period as one century is not worth noticing when you are dealing with an unprincipled and wicked adversary, and I should not have thought it worth our while to consider this matter, or even to mention it, had it not been that I am afraid the whole story is a myth, after all. I say afraid, because it is never pleasant to give up one of the delusions of your boyhood; and we have all heard so much and read so much and seen, perhaps wept over, so many beautiful pictures connected with this tragedy, that if that romance is torn out of our memory we will feel as though we had been deprived of some of our personal property. And yet, it is not at all certain that the heroic maid ended her life in the blazing fire of Rouen. Modern investigation seems to point to a much less romantic but quite as satisfactory termination of that glorious life. Newly discovered documents have led to the supposition that Joan not only escaped martyrdom, but was actually married. The documents cited in support of this theory are certainly very strong and very plausible. They are

entitled to a great deal of weight, indeed to so much weight that if the Jesuit fathers who did not put her to death and the fanatical and bigoted men who did (or who are supposed to have done so) were upon their trial, there would be sufficient doubt in the case to acquit them all. Here, for instance, is a translation of an extract from a manuscript register of the events that had taken place only a short time before. It was found in the city of Metz by Father Vignier of the Oratory, who is described as "a learned and zealous philobiblion," ever in pursuit of literary discoveries, of which so many are due to the institution of the Oratory. The manuscript is as follows:

In the year 1436 Messire Phlin Marcon was Sheriff of Metz, and on the 20th day of May of the aforesaid year, came the maid Jeanne, who had been in France, to la Grange of Ormes, near St. Privé, and was taken there to confer with any one of the Sieurs of Metz, and she called herself Claude: and on the same day there came to see her there her two brothers, one of whom was a knight and was called Messire Pierre, and the other "petit Jehan" a Squire, and they thought that she had been burnt, but as soon as they saw her, they recognized her, and she them, and on Monday the 21st day of the said month, they took their sister with them to Boguelon, and the Sieur Nicole, being a knight, gave her a stout stallion, of the value of thirty francs and a pair of saddle clothes; the Sieur Aubert Bouelle, a riding hood; the Sieur Nicole Grognet a sword; and the said maiden mounted the said horse nimbly, and said several things to the Sieur Nicole, by which he well understood that it was she who had been in France and she was recognized by many tokens to be the maid Jeanne of France, who escorted King Charles to Reims; and several declared that she had been burnt in Normandy, and she spoke mostly in parables.

The narrative then goes on to relate how a certain count saw her and loved her greatly,

and when she wished to go away he had a handsome cuirass made for her to equip her therein, and there was solemnized the marriage of Monsieur de Hermoise, Knight, and the said maid Jeanne. And afterwards said Sieur Hermoise with his wife, the maid, came to live at Metz in the house that the said Sieur had opposite to St. Seglenne and remained there until it pleased them to depart. (De Quincey's Essay).

A satisfactory illustration of the purely patriotic fallacy may be found in the charming story of William Tell. If there is anything that that sturdy little nation Switzerland feels proud of, besides its mountains and its cheese, it is the traditional glory that hovers about the exploits of that ancient hero. And now come more of these image-breakers, who insist that William Tell did not amount to much, after all—chiefly because he never existed, and secondly because, if he did exist, he was a Dane or Scandinavian, which would not make the case much better for the Swiss, who have claimed that he was peculiarly and exclusively their own. The whole story seems to be a fable. And the gallant exploit of shooting the apple off his boy's head, and his fierce answer to the tyrant Gessler, and his nimble jump into the rowboat are all swept away by the ruthless hand of subsequent historians. Perhaps, and we offer this by way of consolation, two or three hundred years hence it will be found that they, too, are in error, and some new and even more interesting history may be substituted for the one we now have.

I will not attempt to enter with particularity into

farther instances of the patriotic lie. It is a very common and in many cases, I think, a harmless one. Surely the harmony of the universe will not be disturbed if that sturdy little people that I have just spoken of continues to turn a Danish or Scandinavian fable into a Swiss reality, nor could other nations plausibly find fault with the French people of bygone ages who were entirely satisfied that the oil which anointed their newly-made kings had come down from Heaven, where it had been made expressly for that purpose. Even if it were not absolutely settled and placed beyond the reach of historical controversy that St. Patrick destroyed all the serpents in Ireland, I can see no sound reason for disturbing a belief which only does honor to that excellent saint, which gratifies the patriotic and religious sense of his people, and inflicts no serious mischief upon the reptiles.

The political lie, or the art of fabricating false reports for political ends, is also one entitled to notice.

It is said to have been a maxim of Catherine de Medici that "a false report if believed during three days may be of great service to the state."

Whether she said it or not is of little consequence. Many before her acted upon this theory, and many since her day have practised the lesson impliedly taught, with signal ability and marked success.

The beauty of this class of fiction consists in circumstance and in a mixture of reality, or what has been happily called "a just discrimination between solid lying and disguised truth."

In every such fable there should be some bit of homely detail to throw a realistic coloring about the picture. Thus, for instance, in a momentous crisis in English history it became necessary to deny the

legitimacy of James II.'s son, commonly known as the Pretender. An inexperienced artist would have confined himself to a direct denial of the child's title. He would have said and sworn that the queen had no son, never had had a son, and never would have a son. But not so the real artist who took charge of the work. He pictures a most probable and most plausible scene ending with the conveyance into the queen's bed-chamber of a spurious infant that a bigoted and unscrupulous popish king was seeking to palm off on a free and Protestant country. But that was not enough to satisfy the exigencies of true art. He gave the hour, the names of the attendants, the language of the actors, and then came the finishing and artistic touch, the stroke of genius which challenges admiration to this day: he positively assured his hearers that the infant had been carried to the queen's room in a warming-pan. The warming-pan crowned the picture with imperishable glory and with absolute success, and so high an authority as Lord John Russell has stated "that the fiction of the warming-pan, enclosing the young pretender, brought more adherents to the cause of the Whigs than the Bill of Rights."

So, too, it is important that there should be an element of truth, if possible, in the story. After the battle of the Boyne, for example, Père Londel, who published a register of the times, recorded the event in the following brief but not entirely satisfactory manner: "The battle of the Boyne in Ireland. Schomberg is killed at the head of the English," and that was all. This has been referred to as an equivocation, and condemned as an unfair way of putting things. Still you will observe that every word is strictly true; and if the writer did not say what became of King James

on that momentous day he may have had good reason for his abstinence. Perhaps he did not know, or such was the rate of speed which that hasty monarch exhibited on that occasion that perhaps he did not care to follow him.

A very pretty bit of this sort of political fallacy was exhibited when Philip sought to conquer England with his fleet. To say that he was a bigot and would send an indefinite number of heretics to the stake was not enough. Perhaps, too, it might have been true. So that wildest of statesmen, Elizabeth's minister, spread reports of the thumbscrews and other instruments of torture which the Spaniards were supposed to have brought with them, and this inflamed the fury of the people in the most satisfactory manner.

Though why they should have been troubled at the importation of thumbscrews or racks it is not very easy to understand, for surely Elizabeth had a very respectable supply on hand, which she did not much scruple to use when her Roman Catholic subjects were concerned. Indeed, the sovereigns of England, Catholic or Protestant, in those ages did not much scruple to make use of that or any other means of distressing their subjects, of whatever faith.

To sum up this part of my subject I will borrow a passage from an author who joins to his other titles to the admiration of posterity that of being the father of the present English premier:

There is no class of political lying which can want for illustration if we consult the records of our civil wars. There we may trace the whole art in all the nice management of its shades, its qualities, and its more complicate parts; from invective to puff, and from inuendo to prevarication! We may admire the scrupulous correction of

a lie which they had told, by another which they are telling! and in triple lying to over-reach their opponents Royalists and Parliamentarians were alike; for, to tell one great truth, the father of lies is of no party!" (Disraeli's *Curiosities of Literature*.)

It would not be just to close without a word of praise bestowed upon what may be called the miniature lie. I allude to the *nickname*—one of the most powerful of all the weapons in the arsenal. In no way can calumny be so charmingly epitomized and falsehood so exquisitely abridged as in the nickname. It is a homely old-fashioned saying that "if you want to hang a dog, give him a bad name"; but it is not only the four-legged friend of man who has suffered from this compendious form of vituperation. Take religious discussion, for instance, and you will see the truth of this most strikingly exemplified. Advocate, if you please, any doctrine of your Catholic faith, and you are silenced with the contemptuous retort that you are merely advocating a popish superstition. If you obstinately persist and get the best of the argument, then you are called a "Jesuit in disguise," which means that you are taught to lie, and that prevarication is one of the cardinal virtues of your creed. If, however, you still refuse to yield, and vanquish your adversary in a fair discussion of a subject, whatever it may be, say, if you please, "Church and State," the newly-created nickname "Vaticanism" is fired off at you, and you leave the field in confusion, none the less perhaps because you do not absolutely comprehend what the epithet means. Somewhat as the famous fish-wife whom Dr. Johnson encountered in wordy strife. The tide of battle ran against the doctor for a while, until he summoned the

parts of speech to his assistance. He called her a *noun*, a *pronoun*, an *adverb*, and she hesitated. He vigorously charged her with being *conjunction* and *preposition*. She wavered. And when at length with stentorian voice he accused her to her face of being a *parallelopipedon*, she broke in disorder and fled in the utmost confusion.

I ought, perhaps, to say a word about that sort of mendacity which is of the newspaper order, but am a little timid about anything that may disturb the serenity of that Olympian divinity which we call the press. So I will content myself with offering you what an old writer, Patin by name, said some years ago. Whether it is true now or not you can judge for yourselves. He characterizes the race of newspaper scribes, as reporters were then called, in Latin that I will cite, but not translate, namely, *hominum genus audacissimum, mendacissimum, avidicissimum*.

He goes on thus:

These writers insert in their papers things they do not know and ought not to write. It is the same trick that is playing which was formerly played; it is the very same farce, only it is exhibited by new actors. The worst circumstance I think, in this is, that this trick will continue playing a long course of years, and that the public suffer a great deal too much by it.

I have now touched upon the art in some of its varied manifestations, purposely refraining from reference to it in its strictly moral aspects. I am sure you need no advice on the subject in connection with the morality thereof, but if you should, perchance, ask my counsel, I will merely say as Mr. Punch did, when consulted by certain young people about matrimony, "*Don't.*"



XVI

THE CHURCH AND THE BAR ¹

MY subject this evening, ladies and gentlemen, is the Church and the Bar, the Priests and the Lawyers. A very fruitful and suggestive theme, you must all admit, and one upon which many lectures might be delivered. If I should undertake to exhibit the virtue and merits of the clergy and their title to your admiration and respect, I might speak all night and still, when I concluded, you would feel that I had not said half enough; while I might occupy your time and attention many evenings without satisfying you that I had exhausted the catalogue of the lawyers' iniquities. I must be careful, then, to steer clear of such appalling dangers and endeavor to attain my end at a lesser cost of time and of patience.

Whatever else you may think and say of my subject, this you must admit, viz., that for once at least the bar, coming before you hand in hand with the clergy, is found in good company. That it has some sort of right to enter into that company without incurring the danger of merited dismissal I shall try to prove. For the only body of men whose superiority over, nay, whose equality with, the bar, I am ready to concede, is the body of the clergy. If I can prove that clergy

¹ An address under the auspices of the Catholic Union.

and bar have been for centuries connected and intimately united—that so little peril to their souls did good and reverend men discern in the practice of the law that they only abandoned it when they could not help it—then I shall claim that I have done much to reinstate my worthy brethren in the favorable opinion of all sensible men. Of course I well know that there ever will and ever must be much abuse and injustice done to those whose mission is to bring the wicked to punishment and to tear away the veil from knaves and hypocrites, but this must needs be in the very nature of things.

No rogue e'er felt the halter draw
With good opinion of the law.

So all the rogues will be against us, and they are numerous enough to make a very considerable noise. But, even rejecting these, what class of men can claim to sit in judgment upon the bar? How we might retort upon them if time were not so valuable and we were not used to abuse! To the faultfinding merchant, for instance, we might answer: Remember that the first genuine mercantile operation on record is Joseph sold by his brethren, and, alas, have you not been doing the same and selling your brothers ever since! If the broker should venture to open his lips in dispraise of our cloth, we might cite against him the definition of his own calling, made so long since and by such high authority that we must fain accept it as true: A broker is a man who, when two persons are doing business, steppeth in between the two and robbeth both! Nor has the carping tailor a right to whisper a syllable against us, for it takes nine of him to make one man, and such a fractional bit of humanity were

wise to hold his peace. As for that useful and respectable member of society the shoemaker, we may say to him, in the time-consecrated language of the proverb, "Shoemaker, stick to your last." As for the doctors, they are so busy fighting and devouring each other on the ground of different and hostile practices that they never think of the lawyer except when it becomes necessary to sue their patients for their fees—so I leave them out of the question. As for the mighty banker, what is he but a money-changer, whose frequent little "mistakes" subject him to ignominious expulsion from the Temple of Justice, much as near two thousand years ago he was expelled from the Temple of Jerusalem! It is true a certain class of social reformers to be found in one of Shakespeare's plays cry out, "*The first thing we do we'll hang all the lawyers.*" But as it has generally turned out that the lawyers reversed the proceedings and hung them, their opinion is of no great practical value. If the reverend clergy, however, should take up the swelling note of denunciation—which, of course, is a wild supposition—then we would answer with a lecture on the clergy and the bar!

The clergy and the bar are old and tried friends. Not only have they fought the good fight shoulder to shoulder on many a well-contested field, but time was when they were, as one might say, Siamese twins, and the mud flung at the lawyer's gown was certain to bespatter the cassock of the priest. This a short historical narrative will show.

I will carry you back to days gone by, to that "once upon a time" that becomes more charming as it recedes into the mists of antiquity, illuminated by no magical stenographer, nor quick-witted newspaper

interviewer, away back to the time when a Norman knight fought at Hastings for a kingdom and won.

Now this new-made king as soon as he had seated himself upon his throne bethought him of his conscience, and, lest in the hurry and confusion of business he should lose it, he sought out a keeper to guard it for him. He had but two valuable commodities, it would seem, that he was not capable of guarding with his stout lance and sturdy warriors; the one, as I have said, his conscience, and the other, the great seal that evidenced his royal authority. So he appointed a Norman priest to the office of Chancellor or Keeper of the great Seal, one Maurice, who subsequently became Bishop of London—thus uniting the office of a judge to the priestly functions. Perhaps I might be satisfied with tracing the office of the chancellor to such a source and one so respectable by reason of antiquity and priestly dignity, but I can confer still higher honor on the judge's robes by carrying you more than two centuries back of William's time and showing you not only a bishop but a saint, Swithin by name, filling the same office. He was a judge, hence must have known some law, whence I infer that he was a lawyer before that. His respectability was so well established that even after the separation of England from the Holy See, Saint Swithin's name was kept upon the calendar, and there it is to this day, the 15th of July. He is called the *raining* saint, because, as the popular rhyme has it in Scotland,

St. Swithin's day, if it do rain,
For forty days it will remain;
St. Swithin's day, if it be fair,
For forty days 't will rain na mair.

I only know of one reported case of this saint, bishop, and magistrate, but if we can judge of all from the specimen transmitted, he certainly stands far above the modern chancellors who have occupied his judicial seat. I translate it from William of Malmesbury. "An old woman came to complain to him that the eggs in her basket which she was carrying to market had all been wantonly broken. He ordered the poor and squalid woman to be brought before him, and when he had heard her piteous story he was moved with compassion, and having at once blessed himself, he restored all the eggs to their former sound condition."

But I must return to King William and his chancellor, merely remarking that before his time we find distinct traces of a class of lawyers, known as Masters in Chancery, all of them in holy orders, all of them well trained in jurisprudence, and all of them no doubt quite as well able to perform the duties of a master's office as their successors, not excepting, perhaps, the drawing of a bill of costs.

Chancellor Maurice, then, was not by any means the first lord chancellor. The office was over two hundred years old when he was appointed to it, and long before he was called upon to divide his time between the Church and the bench there was a sort of college of justice, composed of the chancellor and his clerical lawyers, who dispensed justice and law, divine and human, and, so far as we know, to the general satisfaction.

We can all understand and readily appreciate the keepership of a kingly conscience when the custodian was a priest, whose holy function it was to keep that delicate part of the royal organism in good condition, but I confess that I cannot quite conceive how lay

chancellors went about it when they by virtue of this high office undertook the same duty. Fancy the lord chancellor who had within his keeping that infinitely delicate organ, Henry VIII.'s conscience; fancy, to bring the matter more nearly home to us, that hard-swearing, godless, immoral old Thurlow, George III.'s lord chancellor, giving ghostly counsel to his sovereign and advising him not to swear, nor blaspheme, nor violate the decencies of domestic life, nor set bad example to his subjects; or, if you can, imagine a keeper of George IV.'s royal conscience trying to do his duty. Indeed, I think the guarded language of an ex-chancellor, who ought to be an expert on the subject, may be fully trusted.

"The custody of the royal conscience may possibly be considered one of the obsolete functions of the chancellor, for he is no longer a casuist for the sovereign as when priest, chancellor, and confessor." I cannot, interesting as the subject would surely be, carry you through the long list of bishops, archbishops, nay, cardinals, who filled the lord chancellor's seat. Many of them have left great names, and to their honor and the honor of their Church be it said that as a rule, and considering the rudeness and freedom of the times in which they lived, they have left an honorable record behind them. It was no rare instance of self-denial for one of these great bishops and judges, after administering the laws of God and man for years, to descend from this eminence to seek the peace and retirement of a cloister, there to await his end. No ribbons, garters, pensions, nor splendid gifts could help him then and he knew it.

But I feel in conscience bound to make one statement that will, I fear, greatly lower these holy men

in your esteem. You have many of you no doubt received a bit of paper, half-printed, half-written, generally very dirty, and which is thrust into your reluctant hand by a seedy but penitent gentleman, against whom your feelings for the moment are simply of hatred unalloyed. That paper, he says, is a "speeny." Your lawyer calls it a "subpœna." You don't call it anything, but invoke something not a blessing on its inventor. Alas, my friends, be careful: it was invented by a bishop, a real genuine bishop, John of Waltham, Bishop of Salisbury, and that I should have to confess it!—it is recorded in the books that great encouragement was given to suitors in that court for the sake of the fees to the chancellor and his officers.

Pray bear these things in mind when you frame your indictment against or pass judgment on the bar; subpœnas and fees were devised by good and holy men, and therefore must be good and wholesome things!

There was another court that was of equal, or almost equal, importance—I mean the Court of the Justicier, or Chief Justice, an office now the first in England with the exception of that of lord chancellor. The latter, however, continues to rank above all others, for no other magistrate carries the king's conscience and the king's seal in the bag.

The first important controversy that we find any mention of as having been tried before this court was about the year 1080. The presiding officer was Geofrey, Bishop of Constance, but in order that lay suitors may take some comfort to themselves and not remain under the serious error that going to law is a sin, I hasten to say that the plaintiff in the case was an

archbishop and the defendant a bishop. It is but fair, however, to qualify this statement by adding that this latter bishop (the Bishop of Bayeux) was Earl of Kent as well, and in that capacity had seized certain lands and privileges belonging to the church of Canterbury. I may here narrate, by way of illustrating the inconvenience of being an earl and a bishop at the same time, that this distinguished personage was some time afterwards arrested by the Conqueror, who was his half-brother, and who laid his own hands upon him, because the officers of justice out of respect for ecclesiastical immunity scrupled to execute his command, the bishop insisted that being a prelate he was exempt from all temporal jurisdiction, whereupon William piously exclaimed: "God forbid that I should touch the Bishop of Bayeux, but I make the Earl of Kent my prisoner!" and incontinently sent him to prison, where he kept him five years. From this ready and nice distinction of King William and his prompt escape from a painful dilemma, I am inclined to think that he had himself given a little attention to the trials held in his court and had profited thereby.

The clergy continued for a long time almost exclusively to fill the judicial offices as well as to engross the practice and the legal profession; indeed they gained great distinction therein, and it is a comfortable reflection that if, as we trust, these worthy churchmen are with the saints, there is a goodly number of lawyers in Paradise.

I do not find that the reverend, very reverend, and right reverend judges objected to the profession of the law or to dispensing justice, nor have I discovered that they ever expressed any fear that such occupations were either derogatory to their character or perilous to

their spiritual welfare. No doubt they understood that the scriptural anathema upon "lawyers" did not apply to the advocate, whose duty it was to aid in the administration of justice, but to the Jewish expounders of the Mosaic law; and it is only reasonable to presume that when the reverend fathers preached on Sunday, after having argued their cases in court on Saturday, they explained this to their flocks, lest they themselves should suffer in their hearers' estimation. I am not aware, if such was their practice, that it has been followed since the profession of the law has become an exclusively lay employment, so that the solemn "Woe to you, lawyers" still adds a note to the chorus of denunciation which I have complained of. As I have said, the clergy continued to fill these offices with very marked ability. Not only did they not murmur at the two-fold occupation to which they were subjected, but the fascination of the bar grew so strong that it seemed a matter of serious apprehension whether the priestly function would not be seriously interfered with by the other. At any rate so the Holy See determined in the reign of Henry II., that monarch having appointed three bishops as commissioners to hold the office of chief justice. The Pope, on hearing of their appointment, wrote to say that it was the duty of pastors to feed their flocks, not to act the part of any secular magistrates, and he bade them leave the court to attend to the diocese to which they had been consecrated. This interference of the holy father in this particular instance does not appear to have been regarded as a positive prohibition, for nine years after we find the Bishop of Durham in possession of the chief justiceship.

It was not until the reign of Edward I. (in 1278)

that a serious attempt appears to have been made to select the judges from among laymen. Though all judicial knowledge had been the monopoly of the clergy and they continued long after this exclusively to cultivate a knowledge of the civil law, yet a school of common or municipal law had been slowly growing up for the legal education of laymen; the societies formed by them were known as "Inns of Court," and from their body Edward resolved to select and did select his chief justice, Ralph de Hengham. In connection with this a singular statement is made by historians. This Ralph de Hengham, when he became a candidate for business at the bar, had not received the tonsure. An unshaven head was a serious obstacle to professional success, owing to the popular belief that no man could be a good lawyer who was not a priest; in fact so serious was it that he felt obliged to take holy orders, and he was made a canon of St. Paul's in order to practice law! The absence of this distinguishing feature of the clerical lawyer was deemed so important an objection that to conceal the want of the tonsure the sergeants at law adopted the coif, or black velvet cap, which became the badge of their order. Fancy a lawyer obliged to pretend that he is a priest in order to get clients! Fancy the client insisting upon a view of the crown of the lawyer's head before he would give him a retainer! This resort to laymen was confined, however, to the law judges and was not extended until a much later period to the chancellors. Their functions, both as keepers of the king's conscience and as judges of a court of equity, were deemed specially to require ecclesiastics for their discharge. Perhaps you may not all quite understand the distinction between courts of law and courts of

equity, nor will I undertake to explain it any farther than to say that the law judges were bound strictly, and in many cases literally, to observe the law as they found it, while the equity judges decided according to good conscience and equity; very elastic terms, you will observe, and depending much upon the discretion, perhaps the whim, of the magistrate. At the present day the rules regulating equity courts are well settled and generally of ready application, but in the infancy of these courts it was easy to go astray and great dissatisfaction has been sometimes expressed at the working of the system. The following passage illustrates this:

Equity [says Selden in his *Table Talk*]*—equity is a roguish thing—For law we have a measure. Equity is according to the conscience of him who is Chancellor, and as that is larger or narrower, so is Equity. It is all one as if they should make the standard for the measure we call a foot, a chancellor's foot, what an uncertain measure would this be! One chancellor has a long foot, another a short foot, a third an indifferent foot! it is the same thing with the chancellor's conscience.*

So, too, the well-known language of Lord Camden on judicial discretion:

The discretion of a Judge is the Law of Tyrants; it is always unknown; it is different in different men, it is casual and depends upon constitution, temper and passion. In the best it is oftentimes caprice; in the worst it is every vice, folly and passion, to which human nature is liable.

Notwithstanding all the objection of which the above extracts give a forcible and eloquent exposition, equity continued to thrive, bishops to fill the chancellor's office, priests to practise in his court, and

laymen, as the homely and expressive saying is, "to remain out in the cold." I am bound to say that the churchmen were very fond of the business, and when they did retire from their forensic and judicial practice they did so, as Falstaff was a coward, only on compulsion. I do not think that it was the regular salary that attached them to this court, however, for in these early days that was not extravagant. Originally the chancellor received an allowance of "five shillings a day, three wheaten cakes, one measure of clear wine and one of household wine, one large wax candle, and forty pieces of candle." The clerks were allowed "ten pence a day and one wheaten cake and half a measure of the household wine and one large candle and twelve pieces of candle." What they did with the seasoned cakes and clear wine after their exhaustive labors in court during the day I can readily conjecture, but the necessity of so many candles is not apparent.

During the century that followed the invasion and conquest of England by the Normans only Normans were appointed to the important duty of keeping the royal conscience. The first Saxon who was honored with such a distinction was Thomas à Becket. An English biographer describes him as one of the most distinguished men of any race that England has ever produced, and he adds "he is now invoked as a saint by all the votaries of the Roman Church."

This celebrated man is therefore peculiarly entitled to notice. His story sounds strangely like a fascinating romance, and whatever may have been his failings when in power, his courage, his spirit, his genius, his eventful life, his tragic end, appeal at once to our imagination, to our admiration, and to our sympathy.

I regret that time will not allow me to transcribe freely from the abundant materials before me. Fitzstephen, his secretary, has given a narrative of his life showing in a graphic manner the mode of living and entertaining at that day.

The Chancellor's house and table [he says] were open to all of every degree about the Court who wished to partake of his hospitality, and who were, or appeared to be, respectable. He hardly ever sat down to dinner without Earls and Barons whom he had invited. He ordered the rooms in which he entertained the company to be daily covered during the winter with clean straw and hay, and in summer with clean rushes and boughs for the gentlefolks to lie down upon, who on account of their numbers, could not be accommodated at the tables, so that their fine clothes might not be soiled by a dirty floor. His house was splendidly furnished with gold and silver vessels, and was plentifully supplied with the most costly meats and wines. The prime nobility of England and the neighboring Kingdoms sent their sons to be servants to the Chancellor. . . . The Chancellor was in high favor with the King, the Clergy, the Army and the people, on account of his eminent virtues, his greatness of mind and his good deeds, which seemed to spring spontaneously from his heart; serious business being finished, the King and he consorted as young comrades of the same station, whether in the palace, in church, in private society, or in excursions on horseback.

But the sunshine of royal favor did not last forever, and he, too, learned not to put his trust in princes. I shall not attempt to recite the quarrel between the King and his chancellor nor its grounds. I will hasten to the culmination. After a hollow truce, in which the King seems to have acted with deliberate perfidy,

they parted for the last time after an interview which was held on French soil. Becket's mind misgave him that he would not be fairly dealt with, but in spite of the warnings which he received and his own forebodings he determined to return to England as Henry wished. When he left he gave utterance to these mournful but pathetic words: "Necessity obliges me in the lowly state to which I am reduced to revisit my afflicted church; I go, Sir, with your permission, perhaps to perish for its security, unless you protect me. But whether I live, whatever may befall me, may the blessing of God fall upon you and your children." Would you not say that the near approach of impending martyrdom had already cast its shadow upon his soul? The dying year was not yet closed when Henry uttered that exclamation which will alone suffice to condemn his name to infamy as lasting as his victim's glory: "Of the cowards that eat my bread is there not one who will free me from this turbulent priest!" While we may in Christian charity hope that these reckless words came not from a murderer's heart, yet they certainly were taken as a license for one of the cruelest and most cowardly crimes that stain the pages of English history. Four knights at once started upon the unholy errand. They at first sought to intimidate him with threats, but there was no room in that stout heart for fear of living man even were that man a king. Undaunted he replied: "In vain you menace me. If all the swords of England were brandishing over my head, your terrors would not move me. Foot to foot you would find me fighting the battle of the Lord." And with no tremor on his lips, no fear in his heart, no hesitation in his step, he left their presence to join in the vesper service that had

commenced in the adjoining cathedral. Already the voices of the choir singing the praises of Him who at that solemn Christmas season had come to teach peace and love to men were resounding through the sacred building. Never on earth was Thomas à Becket to join in singing his Master's glory. As soon as he had entered the church his trembling attendants ordered the gates barred behind him, but he at once ordered them to be reopened. "The temple of God," he said, "was not to be fortified like a castle." He had not reached the altar steps when four mail-clad knights with twelve companions, all in armor, burst into the church. The archbishop disdained to fly, as he might well have done with the aid of the darkness that was fast gathering about them all. A voice was heard, "Where is the traitor?" No answer was made. "Where is the archbishop?" was the next cry. He replied, "I am here, the archbishop, but no traitor. Reginald," he added, turning to the leader of the murderous mob, "I have granted thee many favors, what is thy object now? If you seek my life, let that suffice, and I command you in the name of God not to touch one of my people." He was then told that he must absolve certain prelates whom he had excommunicated, much to the king's displeasure. He refused. "Till they make satisfaction I will not absolve them!" "Then die," said one of the assassins. The blow aimed at his head was partly warded off by one of his assistants, whose arm was broken by the weapon intended for his master. The prelate felt the blood trickle down his face, but his heart was still firm and his spirit untroubled. He joined his hands and bowed his head, saying, "In the name of Christ and for the defence of His Church, I am ready to die."

His assailants then wished to remove him from the church, as though the murder would be less heinous in any other place, but he declined. "I humbly commend my spirit to the God who gave it" were the last words that passed his lips, and hardly had they been uttered when blow upon blow was showered upon him. He was left a corpse at the foot of the altar. In spite of all the protestations, proclamations, and prohibitions of the King he was looked upon as a martyr. He was canonized shortly after his death, and the shrine of St. Thomas of Canterbury became one of the most honored and the most popular in England. To be perfectly impartial, however, I am bound to state that four hundred years after, Henry VIII., having concluded to throw off the authority of the Pope and substitute his own, determined that if the Pope could make a saint, the King could unmake him; and, not approving of St. Thomas à Becket's principles touching State and Church, he caused his attorney-general to bring an action, technically known as a *quo warranto* information, against the dead bishop for usurping the office of a saint. Thomas à Becket was summoned to leave the bed where he had slept for centuries, to appear in court to answer the charge. Alas! King Henry could summon spirits from the vasty deep, but would they come? St. Thomas failed to appear. Thereupon this impartial and generous king appointed a lawyer to appear for and defend him. After counsel had been heard the following sentence was pronounced:

Thomas, sometime Archbishop of Canterbury, having been guilty of contumacy, treason and rebellion, his bones shall be publicly burnt to admonish the living of their duty by the punishment of the dead: and the offerings made at his shrine shall be forfeited to the Crown.

The last clause of the sentence, you will observe, was not the least important nor the least profitable to his Majesty, who could well afford to appoint counsel at the public expense to defend the ex-chancellor's title to a saintship.

To close this part of my subject I will give you the language of the proclamation issued upon the rendering of this judgment:

For as much as it now clearly appeared that Thomas à Becket had been killed in a riot excited by his own obstinacy and intemperate language and had been afterwards canonized by the Bishop of Rome as the Champion of his usurped authority, the King's Majesty thought it expedient to declare to his loving subjects *that he was no Saint, but rather a rebel and a traitor* to his prince, and therefore strictly charged and commanded that he should not be *esteemed and called a Saint*: that all images and pictures of him should be destroyed, the festivals in his honor be abolished, and his name and remembrance be erased out of all books under pain of his Majesty's indignation and imprisonment at his Grace's pleasure.

You may therefore take your choice and call Thomas à Becket a saint and martyr or an instigator of riots, as you acknowledge the authority of the Pope or of Henry VIII. in the premises. As it only strengthens my argument to-night to add as many saints as possible to my roll of lawyers and judges, I trust you will take the papal view of the case. Still there is something so strikingly and refreshingly original in the idea of the "riot" instigated by the defenceless archbishop, who provoked the sixteen mail-clad men by his obstinacy and bad language, that I have not a word to say against those who may differ from me on this

point. Do not fail to remember, however, that whatever else he was or was not, he was a lawyer!

I hope that I may now not unfairly claim that I have redeemed my pledge and that I have shown you that the clergy and the bar went hand in hand for centuries, and that distinguished prelates and zealous churchmen did not deem the profession of the law one of which they need be ashamed—nay, so important and sacred were the duties attached to its exercise that for a long time they kept it all to themselves! Perhaps you may say in answer to this that I have only satisfied you that the bar was entitled to admiration and respect so long as this state of things lasted, and ask how it was when untoured gentlemen took the place of holy fathers in the courts. Although I have well-nigh exhausted my time, and perhaps your patience, I shall say one word in reply to this.

I must premise by observing that I do not pretend that all the judges who succeeded the ecclesiastical incumbents were by any means perfect; indeed some of them were very bad and unprincipled men. Numerous reasons had contributed to make the appointment of clerical chancellors imperative. They were the best informed, I might almost say the only well-informed, men of the day. They gave particular attention to the study of the law, they did not endanger the crown by accumulating wealth or influence in their families, and, as the historian Hume (Vol. II., p. 409) admits, they were restrained by the decency of their character from that open rapine and violence so often practised by the nobles. Indeed these early chancellors did their duty in such a manner as to deserve the praise and gratitude of posterity. The English nation, says a distinguished modern historian,

owes "a debt of gratitude to the chancellors who must have framed and revised the statutes which are the foundation of our judicial system, who must, by explanation and argument, have obtained for them the sanction of Parliament, and who must have watched over their construction and operation when they first passed into law." It is not to be wondered at if the sudden introduction of a new class of men was not attended with the best results. Indeed Edward III., who was the first to resort to lay chancellors and who appointed one in 1340, found the experiment to work but indifferently. Partly owing to this and somewhat, perhaps, because the bishops murmured at the withdrawal from them of the office which they considered belonged to their order, he returned to the Church for his conscience-keeper. But after this, though several church dignitaries continued to hold the office, laymen were from time to time appointed until the reign of Henry VIII., when the office ceased to be entrusted to any but laymen.

We have a curious specimen of the opinion which learned and book-loving bishops entertained of their ignorant brethren outside of the church. Bishop de Bury was in every sense a lover of books: they were his comfort, his delight, his recreation, and their acquisition the darling object of his ambition. No jealous lover could speak more fondly of his beloved than the pious bishop of his precious books. Hear him when his wrath is aroused on his favorite topic, the use and abuse of books:

You will perhaps see a stiff-necked youth, lounging sluggishly in his study, while the frost pinches him in winter time; oppressed with cold, his watery nose drops; nor does he take the trouble to wipe it with his handkerchief till it

has moistened the book beneath it with its vile dew. For such a one, I would substitute a cobbler's apron in the place of his book. He has a nail like a giant's, perfumed with nastiness, with which he points out the place of any pleasant subject. He distributes innumerable straws in various places with the ends in sight, that he may recall by the marks what his memory cannot retain. . . . Furthermore, laymen to whom it matters not whether they look at a book turned wrongside upwards or opened before them in its natural order, are altogether unworthy of any communion with books. Let the clerk also take notice that the dirty scullion reeking from the pots, do not touch the leaves of the books unwashed.

But if I do not find you at least one instance of a real Christian chancellor and lawyer who was not a priest or a bishop you will think that I am unable to fulfil my promise. I mean, then, before closing to cite a single example and to say a word of one who comes as near representing the ideal perfection of Christian character as any man whose name I have mentioned to-night. Indeed I know of no blemish in that character, of nothing that could be added to make his name shine with purer brilliance; and as though it had pleased Providence to make his fame complete, he died the death of a martyr after living the life of a saint. I allude to Sir Thomas More.

This distinguished man, as celebrated for his learning as his piety, came very near entering a convent in early life and ending his days as a monk, but finally changed his mind before becoming irrevocably bound. He concluded to marry, in order that he might be a pattern (this is his own language) "to pious married men how they should carefully bring up their children; how dearly they should love their wives; how they

should employ their endeavors wholly for the good of their country, yet excellently perform the duties of religious men."

After his admission to practice he rose so rapidly that there was scarcely any cause of consequence in which he was not engaged. I regret that I am not able here, from lack of time, to give you a full insight into his beautiful private life, to which there are so many testimonials. His son-in-law, who dwelt under his roof, says that "his custom was daily (besides his private prayers with his children) to say the seven psalms, the litany, and the suffrages following: so was his guise with his wife and children and household nightly, before he went to bed, to go to his chapel and there on his knees ordinarily to say certain psalms and collects with them." Erasmus says: "His house was a school and exercise of the Christian religion. All its inhabitants, male or female, applied their leisure to liberal studies and profitable reading, although piety was their first care. No wrangling, no angry word was heard in it; every one did his duty with alacrity and with a temperate cheerfulness." In an evil hour for him he was appointed lord chancellor by his king, Henry VIII. How he filled the office I need not say. The wish that Shakespeare put into Cardinal Wolsey's mouth when told of More's appointment beautifully expresses it, for he was all that that cardinal (himself a chancellor) once wished him to be:

May he do justice.

For truth's sake and his conscience:

That when he has run his course

And sleeps in blessings, his bones

May have a tomb of orphans' tears wept on them!

But, alas! King Henry must be pope—a harmless wish enough to all but himself had he not insisted that others must recognize him as such. One—the first—layman called upon to give the example of this recognition was More. The whole trouble arose out of Henry's wish to repudiate his wife, Catharine, and to take a new one. How many learned and great men gave in to his wish we all know. Luther did not, it seems, approve of repudiating Catharine, but was willing that Henry should take Anne too. As Lord Campbell writes, he (Luther) had a great leaning to polygamy and thought that it would be better that a priest should be allowed several wives than none at all, and that the practice of the Jewish kings might be safely followed. But More persisted in following the dictates of his conscience. Persecutions, imprisonment, threats of death, separation from all those whom he loved; and finally, by a refinement of cruelty which was no exceptional fact in that bloody reign, his few books in his prison cell were taken away from him. But nothing shook him—nay, nothing seemed to impair that quaint and gentle cheerfulness that so peculiarly distinguished him. There is one sight more beautiful than a strong man struggling with adversity: it is the spectacle of a brave man who silently and smilingly bows his head to the inevitable!

There was one short struggle in his breast at the commencement, but it was soon over and the only evidence we have of it is in the beautiful words that he uttered after an examination before the lords who sought materials for his conviction. "In good faith," he said, his old merry smile lighting up his face, "in good faith I have given the devil a foul fall: because I have with those lords gone so far that, without great

shame, I never can go back." And he never did. When he was threatened with death if he resisted the King: "Is that all?" he said; "why, then there is no difference between your Grace and me, but that I shall die to-day and you to-morrow." And in that same spirit, with that same brave cheeriness, he lived through the dreary time until his spirit left his body for the world in which he already seemed to dwell. What more beautiful picture of a saintly life and saintly end than this? It remains for me but to show you how he felt towards his enemies and I leave him, reluctantly, I confess, for of all the names that stand out in the long roll of English lawyers and chancellors none, I think, is more lovable and none more admirable than that of Sir Thomas More. Thus he spoke to the judges who sentenced him to death:

This farther have I only to say, my Lords, that like as the blessed apostle Saint Paul was present and consenting to the death of the protomartyr, Saint Stephen, keeping their clothes that stoned him to death, and yet they be now twain holy saints in heaven, and there shall continue friends together forever: So I verily trust and shall therefore heartily pray, that, though your Lordships have been on earth my Judges to condemnation, yet that we may hereafter meet in heaven merrily together to our everlasting salvation; and God preserve you all, especially my sovereign Lord the King, and grant him faithful councillors.

It is not my province to pass historical judgments, but I ask the privilege of reading to you one short passage from an author whom I have often referred to, Lord Campbell, a learned writer, once chief justice and lord chancellor of England, on the character of Henry VIII., the king whom Sir Thomas thus prayed

for. I do this because it is the fashion now to rewrite the verdicts of history and I think you may not be displeased to hear the opinion of one who, in addition to his distinguished ability and experience in weighing evidence, is not open to the objection of taking the Catholic view of history:

We may be amused by a defence of Richard III., but we can feel only indignation and disgust at an apology of Henry VIII., whose atrocities are as well authenticated as those of Robespierre and are less excusable (vol. i., Lord Chancr., p. 473). It is impossible that there should not have been general joy at the deliverance of the country from the rule of such a heartless tyrant (p. 522).

I should have wished to carry you down to a later period, to cross the channel with you that we might catch a glimpse of that grand old French bar, to which as far back as Charlemagne none could be admitted except "mild, pacific men, fearing God and loving justice."

I wish that I could show you some of the splendid figures of our own American bar, second to none in ability, in honest independence, and fearless dignity: our Marshalls, Storys, Choates, Websters, and, shining brightly among them all, the serene and gentle figure of brave old Chief Justice Taney, who lived down obloquy and slander by the purity and modesty of his life even more than by the superiority of his genius—but time will not permit.

If you should ask me the name of the bar's patron saint I should feel bound to say that I cannot answer. I am not sure that it has one or has not, but I will give you the facts and let you decide.

Carr, a very old writer, tells this story: Saint

Evona, a lawyer of Brittany, came to Rome to entreat the Pope to give the lawyers a patron saint, to which the Pope replied that he knew of no saint but what was disposed of to other professions. At which Evona was very sad, and earnestly begged of the Pope to think of one for him. At last the Pope proposed to St. Evona that he should go round the church of St. John of Lateran blindfold, and after he had said so many *Ave Marias* that the first saint he laid hold of should be his patron; which the good old lawyer willingly undertook, and at the end of his *Ave Marias* he stopped at the foot of St. Michael's altar, where he laid hold of the devil under St. Michael's feet and cried out: "This is our saint; let him be our patron." So, being unblindfolded and seeing what a patron he had chosen, he went to his lodgings so dejected that a few months after he died.

And now to conclude, and that I may magnanimously end with the laugh against myself, I will give you a poetical effusion, attributed, falsely I doubt not, to a clerical pen (Jeaffreson):

Professions will abuse each other;
The priest won't call the lawyer brother,
While lawyers still be-knave the parson,
And say he cants to keep the force on.
Yet will I readily suppose
They are not truly bitter foes,
But only have their pleasant jokes
And banter, just like other folks.
And thus, for so they quiz the law,
Once on a time th' Attorney Flaw,
A man to tell you as the fact is,
Of vast chicane, of course, of practice;
A notice had to quit the world,
And from his desk at once was hurled.

'T is said (without ill-natured leaven)
"If ever lawyers get to heaven,
It surely is by slow degrees."
(Perhaps 't is slow they take their fees).
The case then now I fairly state:
Flaw reached at last to heaven's high gate;
Quite short he rapped, none did it neater;
The gate was opened by St. Peter,
Who looked astonished when he saw,
All black, the little man of law;
But charity was Peter's guide,
. . . he would not o'er pass
The penitent of any class;
Yet never having heard there entered
A lawyer, nay, nor ever ventured
Within the realms of peace and love,
He told him mildly to remove,
And would have closed the gate of day,
Had not old Flaw, in suppliant way,
Demurring to so hard a fate,
Begged but a look, tho' through the gate.
St. Peter, rather off his guard,
Unwilling to be thought too hard,
Opens the gate to let him peep in,
What did the lawyer? Did he creep in?
Or dash at once to take possession?
Oh, no, he knew his own profession:
He took his hat off with respect,
And would no gentle means neglect;
But finding it was all in vain
For him admittance to obtain,
Thought it were best, let come what will,
To gain an entry by his skill,
So while St. Peter stood aside,
To let the door be opened wide,
He skimmed his hat with all his strength,

Within the gate to no small length.
St. Peter stared; the lawyer asked him
"Only to fetch his hat," and passed him;
But when he reached the hat he'd thrown,
Oh, then was all the lawyer shown;
He clapt it on, and arms akimbo
(As if he had been the gallant Bembo),
Cry'd out—"What think you of my plan?
Eject me, Peter, if you can."

And there he remained, it is said, "the black sheep of the saintly family!" But the whole story, as you must know, is a malicious fabrication, for a profession that counts priests, bishops, archbishops, cardinals, saints, within its ranks need resort to no such subterfuge to enter heaven. To assert the contrary would be a libel on all these good and reverend men, and as they need no defence from me, upon their merits I may rest my case.



XVII

ATTORNEY AND CLIENT ¹

LET me ask you to note, by way of preface, that the President has said that this is simply a "law talk." I have been called upon so frequently, with the full consciousness of my own shortcomings, to make addresses, and lectures, and speeches, which taxed my sesquipedalia to the utmost, that when I am told that I may "talk," and that all that I possess in my vocabulary need not be produced, there is a sense of refreshment about it which you younger men cannot understand. This is to be simply a conversation between you on the one part and myself on the other, differing from ordinary conversations only in this—that I shall speak and you shall listen.

It being settled between us that nothing further shall be expected of me than simply some desultory and informal talk on matters in which we are all interested, I shall proceed to say a few words upon the subject assigned to me, viz., Attorney and Client.

You will observe that there are certain topics which are always treated jointly. You never read a book on "Parent," or "Husband," or "Guardian." It is always "Parent and Child," "Husband and Wife,"

¹ A law talk before the students of the Columbia College Law School, January 15, 1892.

"Guardian and Ward," because it is evident that one cannot well be a parent without a child, nor a guardian without a ward, nor a husband without a wife; neither may he be an attorney without a client. But the client does not rush up to you at the first appeal of your eager voice. You may have an office, which is a great deal of itself, and you may rejoice in a signboard, gold and black, and you may take great comfort in the possession of a degree from Columbia College, but until you have felt the quickening influence of the client's presence, until his coming has aroused your dormant possibilities, you can earn no fame, accumulate no estate, and, like the king, you can do no wrong; in a word you cannot flatter yourselves that you have attained the dignity of a real lawyer. Therefore it is that whenever the subject of attorneys is treated, you will always find that the "client" is coupled with him as in those other subjects that I have spoken of—husband and wife, guardian and ward, etc.—although I can conceive of the client without an attorney much more readily than of an attorney without a client.

You have all of you read, being students of Columbia College, how Prometheus stole the fire from heaven to animate the senseless clay; so, too, with the attorney—obscurity and despondency are his companions until the client, bringing sunshine into the desolate office, has given him animation and life, and then together they rule the world.

An exaggeration, you will say, but it is not. No great question can be or ever has been settled except by arms or by judicial decision, and the judicial function can only be exercised when attorney and client set the springs in motion. All our political freedom and progress depend in a great measure on the fact that

we have attorneys, and that attorneys have clients. The majestic figure of Marshall would not loom up in our calendar of great judges if attorney and client had not appeared hand in hand before him; nor would his great and brilliant successors and brethren of the same bench have had the opportunity to lay down our political landmarks and define the rights of government and citizen but for this beneficent union of the two.

Nothing of any practical value ever has been or can be done under our system of government unless settled by the law, and the law is powerless until the attorney and client together set its machinery in motion, invoke its aid, and procure its judgment.

In spite of this, I feel bound to say that if we look to modern or ancient literature, if we study the records of the past, we will find that the attorney has always borne a bad name, and that his reputation has always been of the worst.

I will presently make a distinction between the attorney and the barrister, but for the present we will look at the subject as if they had always been united, as they are with us now, under the one name of lawyer, or of advocate. English literature is full of allusions to the attorney, and invariably depicts him in the same colors, shrewd, adroit, unscrupulous; never generous nor chivalrous. Writers of fiction, who reflect and mould public opinion, have vied with each other in describing him in unflattering terms. Quirk, Gammon & Snap have earned undying fame. Uriah Heep will go to posterity, with Tidd's Practice in his hand, known to many who have never heard of Lord Mansfield. Some of you may, and others of you who are graduates of Columbia must, remember that charming

ode of Horace, in which he addresses Mercury thus: "*Mercuri fecunde nepos Atlantis*," and take therefrom comfort in the antiquity of eloquence and advocacy. But I cannot help observing that he goes on and describes him as "*callidum quicquid placuit jocosu condere furto*," or, as old Smart translated it a hundred years ago, "a sly practitioner to conceal whatever he chose, in merry theft."

So we find in the Acts of the Apostles that Barnabas was spoken of as Jupiter, while Paul was called Mercury because he was the chief speaker.

One of the stories of a conspicuous after-dinner speaker, whom you all know by name, illustrates this tendency. It relates to an attorney by the name of Strange who was on his death-bed. He called his wife, and he told her that he wanted no inscription upon his tomb except these words: "Here lies an honest lawyer." She said, "Why is that?" "Well," he said, "nothing more is necessary; when people go by they will see the epitaph and they will say, 'That's Strange.'"

The story, ancient as it is, clearly exhibits the prejudice against the attorney,—but it will not be necessary to discourage you by multiplying examples.

I have been unable to find all through history, from the earliest days, any kind words for the attorney. Perhaps this deep-rooted prejudice may be on the decline, perhaps not. My own hope is that Columbia College will send from her walls men who will drive the detractors of the profession to confusion and retirement. We have often had lawyers, be it said by way of consolation, who bore such fruit that they became eminent in the church, and in fact in some instances have been canonized. For instance, Yves of Chartres,

many hundred years ago, was a celebrated lawyer, but for some reason he abandoned his profession and threw himself into the Church. He became noted for his good deeds, his virtue and his learning (some of it, let us hope, acquired at the bar), and finally was enrolled among the saints. But justice requires me to add, lest we should be unduly inflated by knowing that the bar produces such men, that in the office recited on that good saint's day occur these words: "*Advocatus sed non latro: res miranda populo!*"

So, too, St. Philip Liguori was an advocate conspicuous for his learning and integrity before he graduated from the bar to the Church and became one of its distinguished doctors.

Another lawyer who entered the Church made such progress therein that in time he became Clement IV.

We may fairly claim, I think, that the seeds of future greatness and of moral excellence were sowed in the professional careers of these good men, and that the soil was first prepared by diligent pursuit of legal studies.

The first duty of an attorney is, of course, absolute loyalty and fidelity to the client. This is the golden rule which he must never lose sight of. All personal considerations must yield to that. His contract and his duty both require it, and he may not omit anything within the limits of his own self-respect that can serve the client.

You will observe that there is a distinction, when you read the books, between the attorney and the counsel, or, as he is sometimes called, the barrister.

In England they have practically abolished the title of attorney, but have preserved the function under the name of solicitor.

There are various reasons why the office of barrister has been one of increasing importance and dignity. The attorney cannot address the court, but must find a medium of communication, and a dumb lawyer certainly cannot be highly esteemed. His position is one of palpable inferiority. If there is any underhand work, it is done by the attorney and is often suspected, whether it exists or not, by the other side. He sees (and may tamper with) the witnessess; he proposes the machinations and devices and furnishes the means of defrauding justice of her due when any of these things are done. Whereas the barrister utters noble sentiments, is spoken to by the court, airs his eloquence at will, snubs the attorney when things go wrong, and dines with the court. Then the law, jealous and suspicious wherever he is concerned, limits the attorney's compensation. How can a client esteem the man who is forbidden to charge more than eighteen pence for reading or two and six-pence for writing a letter, and who grows rich on the multiplication of such items?

Perhaps this practice of charging small sums for trifling services has had as much to do as any other one cause with bringing bad repute upon the attorney. The temptation to make motions and to take various dilatory proceedings for the sake of making costs has been a constant source of pettifogging and of consequent discredit. A certain attorney in a remote section of this State was famous for his vexatious methods and grasping anxiety for costs. It was said of him by a brother attorney who had, no doubt, smarted under his successful efforts to place him, too, under contribution, that he never prayed for his daily bread without adding a supplemental petition that it might be granted with costs.

Warren, who is chiefly known as the author of *Ten Thousand a Year*, declaims with loud, and no doubt justified, indignation against the practice, which he found most pernicious in one instance at least, of resorting to frivolous objections for the purpose of making costs.

He once had a declaration on a bill of exchange demurred to, because, instead of the words "in the year of our Lord 1834," he had written "A.D. 1834." Mr. Warren says, in his *Duties of Attorneys*:

I attended the late Mr. Justice Littledale, at Chambers, to endeavor to get the demurrer set aside as frivolous, or leave to amend on payment of a shilling, but that punctilious, though very able and learned Judge, refused to do either. "Your client, sir," said he, "has committed a blunder, sir," which can be set right only on the usual terms, sir. "A.D.," sir, is neither English nor Latin, sir. It may mean anything or nothing, sir. It is plain, sir, that here is a material and traversable fact, and no date to it, sir"; and so forth: whereupon he dismissed our poor summons, with costs. That demurrer had been spun out by a pleader to an inconceivable length, in ringing the changes on that one objection, and my client had positively to pay out of his own pocket between seven and eight pounds. Now, was not that a dirty, a detestable piece of pettyfogging? Will any of you ever descend to such conduct? And take care, in your turn, not to expose yourselves to these attacks. This "A.D.," which I have mentioned, happened to have been left standing, because the clerk who drew the declaration had been, observe, "in a hurry," which same hurry cost his master between seven and eight pounds.

This decision upon the letters A.D., thus held not to be Latin, adds some zest to a story which I once heard from your own president. It seems that a member of

the Brooklyn Board of Education, whether appointed by Mayor Low or his predecessor does not appear and is not material, was walking in the suburbs of Brooklyn with a friend more recently arrived from abroad than himself. It happened that they found on their way a newly-erected schoolhouse, which bore on its front this strange device, "A.D. 1870." "What on earth does A.D. mean?" enquired the comparative stranger. "Oh, that means Annexed District." That explanation might have seemed satisfactory to Mr. Justice Littledale; it certainly was not open to the objection of being in Latin.

There is much loose and idle talk about the duties of the attorney. Many sonorous maxims are laid down by ethical teachers, but the trouble is that the maxims are so high and require so much self-denial that few will undertake to follow them. In law, as in everything else, there are heights that men will sometimes reach. But general rules are made for the mass and are of no value if they require superhuman virtue to carry them out. The standard with us is high—it must be high; higher, I think, than in any other pursuit. But even attorneys are human. They desire to live out of their labor, to provide for their families, to lay aside some provision for old age. They will, as a rule, prefer wealthy clients to poor ones and will not consider themselves criminals because they do not always attach a sacerdotal character to their profession. But when the character of the profession goes down, it is evidence that the community at large is on a declining grade, for there has been no time when the honor of the profession has not compared favorably with that of the most favored pursuits.

I shall not here undertake to discuss the question

how far, if at all, the great profession of the law has abdicated its dignity or surrendered its moral greatness; many, indeed most of the writers, seem to answer the question in the affirmative, and mourn over the decay of the bar. They may be right, or they may be wrong, but it must be borne in mind that as we grow older the beauties of the past are touched with the glow of the setting sun, and we recall the time—we being boys—when things generally were better than they are.

That the former high standard of professional decorum and dignity has been to some degree impaired may not be disputed by those who have studied the subject. If it be so, various causes may be assigned for the fact, prominent among which are the right to sue for fees, the frequency of bargains with the client for contingent compensation, and a feverish desire, common to every profession in every community, to acquire wealth as rapidly as possible. Still we hardly deserve to be called, in the vigorous language of Judge Sharswood, "a horde of pettifogging, bar-ratrous, custom-seeking, money-making lawyers," although we shall agree with him that such a class constitutes one of the greatest curses that can afflict the state.

Napoleon seemed to consider the legal profession somewhat in this light. He was quite willing that the lawyers should practise their calling provided they did not interfere with him or his business. He once expressed a wish that a lawyer's tongue might be cut out if he ventured to use it against the state; a summary remedy which the great Emperor never literally carried out, although it must be confessed that he showed no tenderness to those who were not satisfied that the

victor of Marengo and Austerlitz could rule the country without their aid. He became more gentle, be it said, in time, for in 1810 he made a decree running thus:

“Advocates shall have free scope for the exercise of their office in the defence of justice and truth; at the same time it is our wish that they should abstain from all invention in their facts and from other evil practices as well as from all useless and superfluous speeches”; thus evidently aiming at an ideal bar.¹

I may here cite as bearing upon the ethics of the profession two or three of the *causes célèbres* in which the duty of the attorney and the limitation upon that duty were involved.

One Cancemi was tried many years ago, in the city of New York, for a murder committed in the street. He was arrested while fleeing (or while supposed to be fleeing) from the pursuit of those who had seen him, they said, commit the crime. The case excited a great deal of newspaper comment and it became correspondingly difficult to find an impartial jury. When the panel had been exhausted it was found that only eleven jurors had qualified and it was then suggested that the case might be tried before eleven men. Counsel for the defence acquiesced, apparently in good faith, and, as I believe, without any thought that they were jeopardizing the rights of their client or in any way exceeding the limits of their duty. The presiding justice was a man of great ability and experience. Cancemi was convicted and sentenced to death. The point was taken on appeal that counsel had no power to make such a concession, that the accused was entitled to a jury of twelve men, and that his counsel had no authority to stipulate that right away. The point was held well taken by our Court of Appeals and

the judgment was reversed. Cancemi was tried a second time, convicted of a minor degree of manslaughter, manifestly a compromise verdict, and, I am informed, after serving out his term of imprisonment, returned to his country, where he obtained a position of distinction. It is now stated and generally believed that he was absolutely innocent.

Much obloquy was thrown upon the counsel because, it was said, they had violated their stipulation. I do not hesitate to express the opinion that they would have failed in their duty if, upon discovering their error, they had not frankly stated it to the court and asked the court to give their unfortunate client the protection to which he was entitled. Counsel in a capital case have no right, nor authority, to concede anything that jeopardizes the client's life, and if they subsequently discover that they have erred, and that a life is to be thereby sacrificed, it is infinitely more manly, and more in accordance with the traditions of the profession, to throw themselves into the breach—to stand the reproach of unreflecting or prejudiced persons and to undo the mischief that they have ignorantly caused,—than to remain silent. Human life is too sacred to be tampered with on the ground of etiquette or to be sacrificed because of counsel's reluctance to confess their fallibility. No one would have blamed these gentlemen if they had retired from the case and if a new-comer had repudiated the binding effect of their stipulation. Was it not more honorable on their part, instead of resorting to such an evasion, to lay aside all personal risks, to face the difficulty bravely, and do their full duty as they understood it?

The great Courvoisier case, in which Mr. Phillips was

counsel for the prisoner, elicited very considerable discussion covering a broad range of professional duties. Courvoisier was charged with the murder of his master, and Mr. Phillips undertook the defence under the strong belief that his client was innocent. In the early part of the trial, however, evidence was developed tending strongly to show that that belief was unfounded. On the second day of the trial the accused called his counsel aside and stated that he was guilty.

"Then you propose to plead guilty?" said Mr. Phillips.

"By no means," said Courvoisier; "I insist that you go on and defend me."

Phillips at once said that he would throw up the case. His associate, however, insisted that he had no right to do so and the matter was privately laid before Baron Parke, who very properly advised Mr. Phillips that it was his duty to go on and make every fair argument in his client's behalf. The trial was a very exciting one and resulted in Courvoisier's conviction.

Charges were made against Mr. Phillips:

First, that he should have thrown up his brief upon discovering his client's guilt;

Second, that he had invoked Heaven to witness that he believed in his client's innocence; and,

Third, that he had attempted to throw suspicion of guilt upon the other servants in the house, knowing them to be innocent.

As to the first: There cannot be two opinions among persons who understand the relation of counsel and client in criminal cases. If Mr. Phillips had abandoned his client's cause after the trial had commenced, he would have been guilty of a gross breach

of professional propriety. He had taken the retainer and he was bound to see that—if his client was convicted at all—it was upon legal evidence, in the absence of which he was entitled to acquittal. He ought to have known and must have known that this was the contract between him and his client, and the only one between them. Counsel of his experience should not have hesitated one instant upon his course.

It is a great mistake to believe that there is the slightest impropriety in defending a man known by counsel to be guilty. It is to the interest of the republic that no man should be convicted except upon legal evidence, and in such cases it is a matter of public policy as well of professional duty that counsel should stand between the accused and the prosecuting officer in defence of his client's right to be tried according to the law of the land. Counsel are not judges nor juries; they are instrumentalities for the administration of justice, and justice can better suffer the occasional escape of a guilty party than to tolerate a conviction not sustained by clear legal proof.

As to the second: The invocation to Providence attesting his belief in his client's innocence was blasphemous if he knew the client's guilt; it was in bad taste and unnecessary if he did not. His opinion upon this point was absolutely irrelevant and should have no weight either with court or jury.

As to the third, viz., throwing suspicion upon other parties: Any reckless attempt to injure persons who had committed no crime would, of course, be highly censurable; but at the same time, if by a fuller cross-examination the counsel could show that there was as much probability that other persons had committed the crime as his own client, it is difficult to hold that

respect for the feelings or reputation of third persons should curtail such cross-examination and deprive his client of the benefit which he might otherwise derive from it.

Lord Brougham certainly would not have been troubled by such scruples if his declaration in Queen Caroline's case as to the duties of counsel was really entertained by himself:

An advocate in the discharge of his duty knows but one person in the world, his client, and no other. To save that client by all expedient means, at all hazards and cost to others, and amongst others himself, is the highest and most unquestioned of his duties, and he must not regard the alarm, the suffering, the torment, the destruction which he may bring upon others. Nay, separating even the duties of a patriot from those of an advocate, he must go on, reckless of consequences, even if his fate should unhappily be to involve his country in confusion.

This is evidently rhetoric—nothing more; but Lord Brougham had an object and a meaning.

The suggestion that the duty of the advocate might compel him to throw the kingdom into confusion was intended to warn George IV. that if he proceeded with his purpose to procure an Act of Parliament freeing him from Queen Caroline, he (Brougham) would claim that by reason of his marriage with Mrs. Fitz-Herbert, a Roman Catholic, his royal Majesty was, for official and legal purposes, dead and his throne vacant. The threat seems to have been effectual.

It is not true that the attorney knows but one person in the world.

He is an officer of the court, a servant in the Temple of Justice, and as such he is bound to do nothing that

will bring discredit upon the court, his own profession, or himself. He should always keep before him the distinction between the attorney, who is a representative and mouthpiece of another, and his own individual self. The two are distinct and should be so kept. Many of the difficulties in which honorable barristers and attorneys have found themselves arise from ignoring this distinction. When counsel declare their personal belief in the integrity of their client, they are overstepping the line. What they believe or do not believe is of no moment or concern to any one.

The rules of the ancient *avocats* of France were akin to the rules that governed the knight and were fashioned after them. The advocate was warned against taking just and unjust causes alike, or maintaining them by trickery or other disingenuousness; he was to respect the court; to be moderate in his charges; to make no bargain with his client for part of the fruits; he was to aid the innocent, no matter what happened to himself; he was to distinguish between the right and the wrong; he was to do justice to all; he was to reject no man, woman, or child because of poverty, or refuse his services to the oppressed. In other words, like the brave knight Bayard, he was to be without fear and without reproach.

The attorney has the right to look to his profession for advancement, but it is a profession and not a trade. The rules of commerce will not apply. He does not deal on equal terms with the client. He may not drive hard bargains nor take advantage of the client's necessities. He should be a gentleman, which implies the doing of his duty and the preservation of his own dignity. Let him so act that he will not fear to have his conduct published to the world. Let him be

truthful and brave. Let him not be awed in his duty by public clamor or by the frowns of judges. His conscience must be satisfied and not any other man's. Let him not set up a very high standard in words for other people, and follow another for himself. Truth and loyalty, if faithfully observed, will carry him through many perils. And above all, when he is in doubt between two courses, one of which offers him a large reward and the other a small one or none, let him turn his back on the great temptation, if it involves the slightest sacrifice of professional or personal honor. His self-respect cannot be measured in money. And let him so act, if he be one of our brothers, that Columbia will look upon him with pride, and hold him out as an example to those who have not had the advantage of her training nor the privilege of being numbered among her children. Let us remember and be strengthened by the reflection that, in the language of Chancellor D'Aguesseau, our order is as ancient as magistracy, as noble as virtue, as necessary as justice.





XVIII

THE BAR OF NEW YORK FROM 1792 TO 1892 ¹

EVEN De Tocqueville, in his great work on the United States, comments upon the exceptional position occupied by the bar in the United States, and concludes that the profession in our country constitutes an aristocracy. In one sense, probably the one in which it was intended, the remark is true. In every free country the bar constitutes, and necessarily must, an order of unusual importance. Its function in peace is similar to that of the army in war, viz., to defend society and to guard the general welfare. Whether special privileges are, or are not, conceded in terms to such a body of men, enlightened opinion must realize its value and rely upon its service. It is the natural organ by which outraged law protests against tyranny, whether from above or below; the sentinel and advance post which signals danger and warns the community of impending peril. The chosen men who gather around a monarch as the fountain of honor, shine with reflected lustre because of their proximity to the royal person. So it is with the bar. Its members and they alone can serve in the Temple of Justice and see that due reverence is paid to the only recognized sovereign, the Law. To be the mouthpiece of

¹ Written for the *New York Press*, Oct. 9, 1892.

that sovereign, to expound his decrees, to stand firmly by his throne, to protect his dignity, this is no mean function. Take away the sanction of the law and nothing is left in Pandora's box, least of all freedom, for freedom without law ceases to be anything of value. It changes its name and is not worth preserving. The history of free government shows the truth of this so clearly that illustration drawn from past records becomes unnecessary. Whether an unwholesome transition has not already begun is another and far different question.

Government Chiefly by Lawyers

It may be that plutocracy is gradually displacing the profession of the law. There are signs that point in that direction, but thus far the peril has only been a threat and not a reality. With scarcely an exception every president of the United States has been a lawyer by profession; the two candidates now before the people have been eminent as members of the bar; senators and representatives are almost universally trained and reputable lawyers, and if it be true that a practice has of late years been growing, in remote States, to confer high legislative office on men of wealth because they are able and willing to pay for the privilege of serving the public, these are but rare exceptions. We may still truly say that the government of the United States for the last one hundred years has been in the hands of the legal profession. As we have prospered and grown on a scale of greatness heretofore unknown, it may not be a reckless instance of deductive reasoning to suggest that government by law, as administered by lawyers, is the best that has thus far

been tried. Some persons, in other respects rational, claim that our progress is due to paternal government protection. It may be curious to speculate upon the effect of a possible combination of free trade and lawyers in office as common factors in the future prosperity of our country, but this would be foreign to my purpose.

True, Washington was not a lawyer, at least so far as I am informed. Probably there were many occasions in which this chasm in his early training was to him a source of deep but unavailing regret. But the necessity for a legal training was not as obvious in his day as it has been since his great service to the nation.

The seeds of our revolution were sown and cultivated by the lawyers, who plainly saw that the struggle must come. The young giant was stretching his long and awkward limbs and fretting at the shackles which bound him and checked his growth. He was uneasy, then impatient, and finally angry. He was slow to wrath, but when he was at length moved to righteous indignation, the lawyers told him why he was justified in his complaints; they taught him the duty of resistance; they encouraged him in its assertion; they instructed him as to his rights, and helped him, by voice and pen, and often, too, with musket and sword, to vindicate his dignity by claiming his independence. Years before the war broke out the lawyers of Boston and of New York had formed societies to discuss the great questions that agitated the public mind. The Sodality of Boston was one of these: composed not of striplings trying their young voices on their neighbors and practising their arts on open-mouthed rustics, but men of years and standing, like John Adams and James Otis; earnest, thoughtful, patriotic, and wise men,

who might well assume to act as self-constituted pedagogues of a young and rising community. The "Moot" was another, which had its headquarters in New York, and consisted of the ablest lawyers of the State. Their debates were of great importance, and their opinions so highly valued that counsel often cited them as bearing upon, illustrating, and establishing the law. In one case it is recorded that the chief justice of the State of New York referred a difficult point of law to the Moot for its opinion.

Lights of the Bar Long Lost

There were many conspicuous men at the bar as the last century closed and the present one displaced it—men of unsurpassed ability and independence of character. The war that had just ended was a training school that kept its influence for many years, indeed until the next conflict revived the warlike spirit and made the peaceful disputes of the forum seem tame and unprofitable.

What young lawyer of to-day has ever heard of Egbert Benson, Brockholst Livingston, John Lansing, Melancthon Smith, or Josiah Ogden Hoffman? And yet they were learned, eloquent, honorable, and patriotic men. They were giants while they lived, and did much to settle important questions for the generations to come. They served the public as well as their clients faithfully and well, but the lawyer's fame is evanescent as the speech that makes it. His contemporaries bear testimony to his merits, but when he has passed from the scene of his labors, his glory sleeps with his perishable body.

Seeming exceptions there are to this, but only

exceptions in appearance. The names of the two greatest lawyers, the acknowledged leaders of the bar of one hundred years ago, still live, but only because the men who bore them have entered into history in a public capacity, and because their names are bound together in one bloody tragedy. Alexander Hamilton and Aaron Burr were the leaders in their day. Hamilton especially enjoyed an undisputed title to pre-eminence. Chancellor Kent, in an address delivered in 1836, speaks of him in terms of unstinted admiration.

Among all his brethren [he says], Colonel Hamilton was indisputably pre-eminent. This was universally conceded. He rose at once to the loftiest heights of professional eminence by his profound penetration, his power of analysis, the comprehensive grasp and strength of his understanding, and the firmness, frankness, and integrity of his character. We may say of him in reference to his associates, as was said of Papinian, *Omnes longo post se intervallo relinquerit*.

Such praise as this, coming from such a source, is sufficient to place Hamilton on the pinnacle of professional fame; but it is the gallant soldier, the friend of Washington, the writer of the *Federalist*, the founder of our financial system, and the victim of Burr's pistol who is really recalled by tradition and who will be remembered by remote posterity. He might otherwise be discovered only by the patient explorer into those musty records that history half scornfully glances at, to mitigate the dryness of more important themes. Who, for instance, will know or care to know a generation hence that another Hamilton made the great speech in *Zenger's* case, and argued with success, fifty years before Erskine, that the jury in a libel case were the judges of the law as well as the facts?

Nor can it be said that Burr's name would arouse an echo of even passing interest but for the part he took in great events, wherein he showed his consummate ability and absolute indifference to principle. As the would-be usurper of the presidency, as Jefferson's vice-president, as the defendant in a great treason trial, and as the slayer of Hamilton, his place is fixed forever beyond the destructive processes of time. Unfortunately for him, if there be such a thing as posthumous misfortune, he will not be forgotten.

These two men, great lawyers as they were, cannot, therefore, be cited as exceptions to the rule. If they had been engaged in the manufacture of tin plate they would have been equally (if not more) conspicuous, provided other elements of their fame had concurred to make them prominent.

A Story of Livingston

One of the most eminent of the lawyers whom I have named, Brockholst Livingston, became chancellor of the State, and subsequently a justice of the Supreme Court of the United States. Mr. Hunt, in his charming biography of Edward Livingston, narrates an incident in the chancellor's life which is very characteristic of the times, and for that reason deserves repetition here. It seems that Mr. Livingston was a bit of a wag—this was, of course, before he was placed on the bench—and amused himself on a certain occasion in writing an account of a political meeting which had been attended by some of his political adversaries. These he sought to turn into ridicule. His raillery seems to us at this day quite harmless. He spoke of a Mr. Fish as a stripling about forty-eight years old, and of a Mr. Jones as "Master Jimmy Jones, another stripling about

sixty." Why Messrs. Jones and Fish should have resented so mild a form of pleasantry does not appear, but they did feel very deeply whatever sting there may have been in these mysterious imputations. They demanded an explanation of Mr. Livingston while he was walking on the Battery with his wife and children. The explanation does not appear to have suited Mr. Jones, who proceeded to chastise Mr. Livingston with a cane, whereupon Mr. Livingston became, in his turn, dissatisfied and gave evidence thereof by challenging and killing Mr. Jones; after which performance he felt at liberty to resume his promenade, *en famille*, on the Battery, which he did without further molestation. Mr. Jones having been removed in this summary but orthodox fashion, there was nothing to prevent Mr. Livingston from reaching high political preference. He accordingly became chancellor, and shortly after a justice of the Supreme Court of the United States.

This gentle toleration of a duellist who had killed an adversary is in striking contrast with the treatment of Burr after he had killed Hamilton. Certainly the provocation in the latter case was real, the fashion of duelling was still recognized as a legitimate mode of settling differences between gentlemen, both men were tried and brave soldiers, accustomed to face death without flinching, and the fight was a fair one, in which the regular forms were minutely observed. And yet Burr became practically an outcast, and spent the balance of his life in friendless solitude. He was punished for his other offences; not for the venial sin of duelling. The man whom he happened to kill was an eminent citizen, honorable and respected. If Hamilton had slain Burr his own social and professional standing would probably have remained unimpaired;

possibly it might have received something of increased dignity. But Hamilton enjoyed a good character and Burr did not. The moral of this seems to be that before a man determines to commit an offence against the law, he should be sure that his character is good. If his character is bad the risk is greatly enhanced. The jury or the public, as the case may be, will convict him of something. Sir Jonah Barrington assures his readers that a man was once convicted at the Irish Assizes of murder, although the victim came into court apparently alive and ready to swear that he had not been killed. The jury was then about retiring, and, in spite of the judge, did so. They explained their verdict of guilty by saying that, while they knew that he had not killed that particular man, they also knew that he had stolen a cow that belonged to one of the jurors and they might not find another and so good a chance to hang him.

It is, of course, the fashion to decry the bar of to-day and to cite illustrious examples in the past to shame the advocates and practitioners of our own time. But this is natural enough; at least it has been universal. Those who look back upon the men and things of a past generation, to which their own life was linked, the memory of which comes back with the joyousness of departed youth, will always find a fitting theme for mournful retrospection in the degeneracy of the times. Imagination uncontrolled joins hands with vain regret; the harsh contours of unpleasant fact are smoothed into beauty by the softening process of uncounted years and grow beautiful in proportion as our vision grows dim. Chancellor Kent himself indulged in this pessimistic fashion of reviewing the past. In the lecture above cited, he mournfully descants upon the

"tendency of things at present to disenchant the profession of much of its attraction. The spirit of the age," he says, "is restless and presumptuous and revolutionary. The rapidly increasing appetite for wealth, the inordinate taste for luxury which it engenders, the vehement spirit of speculation, are so many bad symptoms of a diseased state of the public mind." Who would have believed that our professional forerunners were afflicted with such fearful propensities? Good, great, venerable gentlemen we supposed them to be, eminently respectable from the top of their bald heads to the soles of their gaitered feet, moving with decorous deliberation from their shabby office to their uptown residence in Prince or Houston street for dinner, returning to work until supper time, unmolested by telephones, undisturbed by telegrams, ignorant of messenger boys, living in happy though unconscious immunity from stenographers, interviewers, law reporters, daily law journals, and other sources of unhappiness. To think that the virus of avarice, gambling, selfishness and the like had polluted their simple and virtuous natures! Perhaps we may be better than they after all, for we have to contend against all these insidious foes, and yet we still exist as a body and upon the whole may claim, in comparison with the rest of the community, to constitute a very respectable class of citizens.

Whatever may have been the merits or shortcomings of the bar when Chancellor Kent spoke thus mournfully, there was a class of young men coming to the front than which the history of our bar offers nothing more admirable. From 1835 to 1870 our roll was bright with splendid names and our courts filled with life and learning. Cutting, with his splendid presence

and perfect mastery of the commercial law; George Wood, the massive expounder of all the learning that related to trusts and real property; Evarts, polished, self-possessed, keen-witted, the hero of the three great cases of our generation—the Johnson impeachment, the Tilden election case of 1876, the Geneva arbitration case; Fullerton, the peerless examiner and cross-examiner,—both of these last still ready with memory intact to tell of the great battles which they fought and the giants that they met; David Dudley Field, aggressive, earnest, impressive, relentless, and like Achilles that Horace describes:

Impiger, iracundus, inexorabilis, acer.

He, too, is still among us in the radiance of an undimmed intellect, to show of what material were made the men whom Chancellor Kent looked upon with such mournful suspicion. "Prince" John Van Buren, too, who covered up his real genius with a cold affectation of cynical indifference and lived to be the putative father of numberless sayings from Aristophanes to date; William Curtis Noyes, ever courteous and ever ready, diligent and indefatigable until the overstrained cords suddenly snapped while he was still in his prime; and James W. Gerard—"Jimmie" to his friends—with the polish and wit of his French ancestry, his inexhaustible bonhommie and good nature, his irresistible facility and felicity in winning juries over to the wrong side, on which he was most at home. "Never attack your adversary with a bludgeon," the writer once heard him say, "run him through with a rapier." He lived up to his own precept. He ran his adversary gracefully and thoroughly through the vital parts, and when he was sure that his victim was thoroughly dead

he held out his hand to help him to his feet. And Benjamin D. Silliman, the veteran of sixty odd years' practice, still ready to counsel his many clients, to unravel intricate knots of law, and to delight hosts of friends with his winning smile, his wise speech, his kindly judgments of men long since gone. Time, alas! will not let my willing pen run on to tell of so many others whom the young bar of my generation looked upon with something akin to superstitious admiration. A volume would hardly suffice to tell of their virtues and their frailties,—for it is a comfort to think that they, too, were human.

The question is often asked: Who is the greatest lawyer you have known? If the interlocutor would explain what he means by the term "lawyer" the answer could be made more readily and easily than without such an explanation. I could name several men who answer this superlative description. But the qualities that make up a great lawyer are so diverse that the question might be objected to as vague and indefinite.

Charles O'Connor was the greatest lawyer that my generation has known, in one sense of the word. He was thoroughly imbued and saturated with the law, its principles, and its philosophy. He exuded law learning as some men are said to radiate goodness. If the law had been an inflammable substance he might have been expected to perish in a blaze of spontaneous combustion, the material being furnished from the essence of numberless tomes which he had perused and digested.

The reports, textbooks, treatises, briefs, essays on the subject of the law which he had assimilated would in their original form have heated the baths of some

modern cities as long as the baths of Alexandria were kept in operation by the volumes that a ruthless barbarian conqueror turned into fuel.

To build up a clean-cut, technical case was as much an object of love to him as the erection of a temple would have been to an architect of old Athens. Logic was his constant companion and friend. Rhetoric he looked on with suspicion, and if at times he did allow himself to be drawn away from the mathematics of his profession, it was only a short-lived truancy. He did show in these brief moments of infidelity to his stern-browed mistress that he might enter the lists with the best sophists of them all and gather laurels with them on the slopes of Hymettus or Parnassus. But he soon tired of the flowers that he picked and flung them aside, as though weaving garlands were beneath his dignity.

To put it in plainer prose, he sometimes gave me the impression that he was reining in his fancy, lest it carry him away. It was a disappointment, and I longed to see him lose his self-control and give a free field to his imagination, and a touch of the spur to the poetical side of his genius. But he never yielded wholly to the temptation. He rode back in season to the beaten track and grappled with court and jury on the prosaic ground of hard, practical sense and absolute demonstration.

As a lawyer, and simply a lawyer, he was great. If he had allowed himself to be an orator besides, he probably could have done so. Imagine Demosthenes with no Philip to denounce, and making it his business to elucidate the law of trusts, and to make contingent remainders intelligible, you have my idea of Charles O'Connor. I may add that some of his philippics are

still extant, and you feel sorry for the modern Philip when you read them.

If, however, you mean by the greatest lawyer the most persuasive, the most delightful, charming, fascinating, and irresistible of men, then you must take Ogden Hoffman. He may not have been great at besieging strongholds. He may not have understood counterscarps, circumvallations, redoubts, and the like. I really believe he could not have captured Alesia two thousand years ago as Cæsar did; but when it came to storming the jury box, to sweeping away intervening obstacles in spite of all the rules of war—except those that rested on honorable carriage—Ogden Hoffman was the chief of them all.

His onslaught was simply irresistible. He was in the jury box with the jurors telling them what to do, and they obeyed him, before the case was out of the judge's hands. He charmed men from their determination, as Apollo with his lyre drew the oaks by the roots from their mother soil. He hypnotized and wrought a spell about them. His voice was like a silver flute in the hands of an enchanter. And it was all done so modestly and gently and courteously that really it was not fair to the other side.

Fortunately for the administration of justice, nature, in giving Hoffman such possibilities of wrong-doing, had limited his capacity for mischief by a double and very effective infliction: he was lazy, and he was a gentleman. He would never willingly harm a human being, even if it could be accomplished without labor, because he was a gentleman. And as for doing a wrong or anything else to any one where labor was involved,—he scorned such baseness. He was incapable of thus flying in the face of the good fairy who had

lovingly endowed him at his birth with a splendid fund of unconquerable laziness.

James T. Brady completes the trio of great lawyers whom I have known. Perhaps he was the most richly endowed of them all. He was a man of intense personality. His massive head with the deep-set eyes, his charming smile and winning ways, his exquisite command of language, his wit, his fancy, his eloquence, his genius, were his, and the union his alone. On the whole, take him altogether, he was second to none. Had he chosen he might have been first.

But there was a *cui bono* note in his efforts before court and jury that handicapped success. Except in great cases, especially criminal cases, he seldom called out his reserves. He fought his battle with a light brigade, as it were, and made use of a brilliantly uniformed cavalry when less picturesque allies might be necessary. But you knew that he had his forces behind him, and when he did take upon himself the responsibility of a human life he was inimitable and never failed to do his best; and more than his best no man could do. In a word, Brady was one of the few lawyers of those I have known who deserved to be called a genius.

The impression that he left on the mind of his juniors was that he could do anything—if he only cared to try. He might have commanded an army or written an epic poem if he had settled down doggedly to work. But such men do not set doggedly to work. Nature's partiality to her chosen children does not often go so far as to hatch genius and industry from the same egg.

Have these left successors worthy of themselves? Certainly they have. The bar is now as firm as it ever has been in the possession of learned, upright, sagacious

and honorable members. We are too near them now to judge them fairly, but we may feel assured that the young men of to-day will, after their hair has turned, recall the broad and scientific arguments of Carter, the brilliant versatility of Choate, the deadly keenness of Parsons, the scholarly erudition of Butler—nay, the splendid qualities of a host of others whom it would be tedious and invidious to single out; they, too, will rank with the best examples of what our profession has produced. But until their work is done who can tell what material will appropriately serve to preserve their memory? Shall it be enduring bronze or brittle clay? You may safely call no man happy, nor great, nor good, nor wise until he has turned his back forever on friends and foes alike.





XIX

THE LAWYER'S RESPONSIBILITIES — LAW REFORM — CODIFICATION ¹

RESPECTABLE tradition requires that no body of young lawyers be allowed to start upon its mission of mercy and benevolence without being first subjected to an address. It may be an exaggeration to liken this process to that of vivisection, but the two have this in common: that, while the benefit to be derived by the sufferer in each case is uncertain, the chief operator usually enjoys and protracts the pleasure of the performance.

There is a poetical fancy, perhaps, at the bottom of this ancient usage, which suggests that the parting words addressed to the eager beginner by the learned, venerable, and ponderous sages of the bar who generally perform these functions, may have been intended to take the place of the happy-omened slipper that is thrown after those who enter upon the cares and duties of matrimonial life, or at least that the oration with which you are served may take the place of the kindly horseshoe which, attached to the door of the new building, brings luck to its fortunate possessor. Let this be the spirit, at least, in which my duty to you is now performed; and be assured that were I to go

¹ Address to Graduates of Columbia College Law School, 1884.

through a literal performance of either of the acts above alluded to, I would not wish you success more warmly than I do.

There is another, and, perhaps, truer theory which accounts for our relative positions to-night. Learned as your wise and distinguished instructors, aided by your industry, may have made you, it is barely possible that you may not yet know all that you should be informed of before undertaking the practice of the best and noblest of professions. Upon this theory a final address is vouchsafed you to round off the imperfections, to supply the deficiencies, and to complete the general character of your professional education. This, you will observe, places upon us a double responsibility, the result of which will be to create on my part a selfish interest in your welfare. A large share of your future professional success will be claimed by me; as to those who may prefer to fail or faint by the wayside, or wander into other pursuits, I shall comfort myself with the reflection that they were careless or forgetful listeners.

If there is one point to which your earnest and lasting attention should be called it is, I think, the real greatness and importance of the profession upon which you are about to enter. Leaving out of question the sacred profession, I am very sure that there is more honor, more truth, more charity, more trustworthiness in our ranks than in any other calling whatever. We can hardly expect others to admit this proposition, much less to proclaim it on the housetops, but I doubt if any fairly intelligent and experienced man would question it if put upon his oath, with an honest fear of the Lord before him. That there is a popular prejudice the other way may well be admitted. Wit—like any-

thing else that is much sought after and rarely found—must exist in a cheap form to be within the reach of all, and it is well established that the cheapest and most popular form is that which is aimed at the bar. For this, many reasons may be assigned, the chief of which is based upon the very superiority which we so justly claim. Foote, an English actor, used to tell his provincial audiences that when an attorney died in London they never buried him. They simply placed the body by an open window in the evening. In the morning the body would be absent, and nothing to indicate the manner in which it had been removed except a most suggestive odor of sulphur. Although I am not called upon to defend the members of a foreign bar, I do not hesitate to declare this a malicious invention. But even if it were true, I would ask whether, when the attorney's clients died, the only reason that prevented their disappearing in like manner, and with like results, was not the fact that the window was kept closed?

For you will observe that there is this peculiarity to be noted in most of the cases where one of us falls from his high estate. While the merchant, banker, broker, tradesman, commits wrongs and frauds for his own benefit and on his own account, the lawyer acts in a vicarious character. His misdeeds usually go to fill the coffers of some sleek Pharisee, who pockets the advantages, disputes the bill of costs, and then thanks the Lord that he is not like one of the sinful lawyers whom he has used to such good purpose. I advise his friends to close the window when *he* dies; there may be nothing in Foote's story, but it is well to be on the safe side.

Again, you will notice that in almost every controversy we are compelled to take our client's story.

Some clients, I am informed, will lie even to their own counsel. My good fortune has kept me from any such clients, but I have observed, in many instances, that my opposing brethren were laboring under that disadvantage, and were grossly deceived as to the facts and merits of the controversy in which they were engaged. But that is inseparable from the profession. All that can be expected from the advocate is that he will never, under any circumstances, be a party to deceiving the court. When he states the facts or presumed facts of a case, he is but the mouthpiece of another person, and upon that person must fall the responsibility of the statement. If he goes beyond that, his responsibility begins.

I suppose that it may be truly said, as an abstract proposition, that in your profession honesty is the best policy; but I should feel ashamed of that profession if it were necessary to make you honest by recalling the benefits that you may receive from an observance of the decalogue and the Revised Statutes. The lawyer who starts in life with this motto to guide him is not fitted by nature nor by his moral education to enter a profession which requires a high standard of personal honor and dignity. He would do well to turn his attention to commercial pursuits, where it may be necessary to keep in view that principle when he is tempted to adulterate his coffee or to dilute his whiskey. I fear that such a one will sometimes, in emergencies, doubt the uniform applicability of the rule, and will abandon it when it ceases to produce an adequate return.

For you will soon discover that the high character of your calling will not be satisfied with this "honest" policy. To be honest in the ordinary sense, *i. e.*, not

to lie, to cheat, to defraud, is of course essential, but you will fall very far short of the proper standard if you do not require of yourselves far more than this. A nice and scrupulous sense of honor,—which is as unlike mere honesty as the fine Damascus blade is unlike a farming implement,—a keen sensitiveness in the protection of others' rights even against yourselves, a proper contempt for everything mean, unmanly, and ungenerous, these should be your ideal of professional requirements. And as for honesty, the time to be honest is when it is not the best policy; the veriest knave will be honest where he sees his profit in fair dealing.

To what exalted positions the pursuit of this ideal will lead, you have all recently seen. Charles O'Connor, the leading member of our state and national bar, died full of years a few days since. He was known only as a lawyer, but in that character he had been conspicuously great. Scornful of all meretricious arts to win popular applause, tenacious of his own opinions, even when they were opposed to the general sentiment, seeking no preferment through political sources, living a secluded and abstracted life, he yet won such fame for himself that not only his brethren and the courts in which he practised deplored his loss, but all classes of citizens united in doing him honor. It was less, I think, to the brilliancy of his attainments that the tribute was paid than to the upright, truth-loving, self-respecting gentleman whose long record contained no stain. Fearless in all his battles, seeking victory only by honorable means, like the old chevalier who died at Sesia, he might well have borne upon his escutcheon the motto *Sans peur et sans reproche*. Fancy Charles O'Connor being honest because it paid!

There is a danger, however, against which I cannot too earnestly warn you in connection with these generous aspirations. Let nothing tempt you to become professional reformers. If you do, you will probably inflict more evil upon your profession and upon society than your whole lifetime can atone for. I do not, of course, mean that when you discover a real mischief in the administration of justice, you shall not try to correct it—certainly it will be your duty to aid in the amendment of the law where your experience teaches that it is deficient; but I do mean to warn you against that not uncommon egotism which prompts men to think themselves wiser, greater, and better than all other men of their age and country. When this delusion seizes upon its unfortunate victim he is ready to drive his Juggernaut ruthlessly over every obstacle that may stand in his way, and in most cases, if he does fail to do untold mischief, it is because his ability to subvert and destroy is not equal to his desire. Fortunately the conservatism and common sense of our profession and of the community stand in the reformer's way and he is generally repulsed by their combined force.

The most dangerous and radical shape which reform has assumed of late years is known under the alluring name of Codification, *i.e.*, the reduction of all our laws and the decisions of our courts to the bulk of a small volume, intended to place within the hands of every man, woman, and child in the state the means of ascertaining his or her rights upon any given subject. This is a charming scheme, but of course no lawyer believes it to be practicable. If he does, he has not read the proposed civil code which has been diligently and persistently pressed upon the attention of the Legisla-

ture during the last four or five years. This subject is so important that I may detain you a few moments more before abandoning it.

As there are no two objects in nature that are precisely alike, so there are in the practice of law no two cases precisely similar. This truth is self-evident. When you make ironclad rules, you cannot reasonably expect them to fit every conceivable case. Indeed, you are apt to find that the majority of cases pass through the rule because of the imperfection of the language in which that rule is expressed, or the real impossibility of covering even the generality of the cases contemplated. Hence the danger of a code; hence, too, the advantages of the common law. The former deals in rules more or less accurately stated, and which must fit the given case or be discarded. The latter deals in general principles, which may be applied to any case which those principles may reach. Thus, the common law is adapted to an expanding condition of society, where new conditions are constantly created, and which no written code can be expected to provide for.

The clamor of the few but active persons who advocate this revolutionary measure is based chiefly upon the pretence that a code would give us *certainly* in the administration of the law. Any scheme that would make the administration of justice certain, or even improve upon its admitted uncertainty, would be most desirable; but no lawyer who reflects upon the subject can doubt that the already unfortunate uncertainty would be increased tenfold. This is one of those points as to which reasonable men have no right to differ, because they have to guide them not only abstract reasoning, founded upon general rules of

experience and common sense, but they know what the result of codification has been in our own State, in our own time. The same eminent gentleman who is now seeking to press the State of New York among his followers in this line of so-called improvement once prepared a Code of Practice, which was to simplify our procedure, avoid expense, and prove a millennium for suitors. That the attorneys who practised under it, especially in the days of its youth, reaped very rich rewards at the expense of their clients, no man can deny; if it was his beneficent object to improve the financial condition of his less fortunate brethren, that object was liberally carried out. But we have a ghastly monument before us, in the shape of hundreds upon hundreds of volumes of law, in which learned and experienced judges manifest their inability to understand what the simplest provisions of that code were intended to convey. Whether six weeks meant forty-six days or thirty-seven; what constituted and what did not a valid service of a summons—these and other portentous matters divided the courts for a quarter of a century. Our overworked judges were obliged to neglect matters of infinite importance in order to settle petty disputes which involved at best ten dollars costs; and, finally, after this quarter of a century had elapsed, and these volumes had been filled, and the legislature had devoted itself to pruning, amplifying, obliterating, and amending for almost a generation of men, the whole scheme was blotted out and a new one substituted; this, in its turn, to undergo the same probationary existence. After such an experience as this, who can in good faith pretend that a scheme which goes to the very foundation of our existence as a people, which enters every home, interferes in every workshop, dis-

turbs every relation of life, brings up new questions between husband and wife, father and child, master and servant, seller and buyer, will not create a disturbance infinitely more alarming than that to which I have alluded? That it will take many years of litigation to settle the meaning of every important section of this proposed code is as absolutely certain as anything in the future can be. And in connection with this let me fortify my statement, lest I be deemed partial, by a reference to what Blackstone has denounced as "the efforts of rash and unexperienced workmen to new-dress and refine the common law of England with the rage of modern improvement; for to say the truth"—he adds—"almost all the niceties, intricacies, and delays (which have sometimes disgraced the English as well as other courts of justice), owe their origin not to the Common Law itself, but to innovations that have been made in it by Statutes." Sir Edward Coke, "that great and well-experienced judge," as Blackstone calls him, declares that "in all his time he never knew two questions made upon rights merely depending upon the Common Law," and he warmly laments "the confusion introduced by ill-judging and unlearned legislators." What would he have said if he could have seen our legislators advocating a scheme subversive of all our landmarks, while at the same time proclaiming and almost glorying in the fact that they have never examined it!

But there appears to me an overwhelming objection to the code, and that is the facility with which it will be tampered with by inexperienced legislators. As one commentator says, "It is perfectly amazing that there should be no other state of life, no other occupation, art, or science, in which some method of

instruction is not looked upon as requisite, except only the science of legislation, the noblest and most difficult of any." It is true that there are exceptions to this rule, and our State is fortunate enough to possess in its Legislature some experienced and able men who stand in the way of such schemes. But how long their influence will continue to thwart and baffle these wild projects, no man can tell; and unless our whole profession, and some part, at least, of the lay community, is aroused to the danger that it runs, we may expect, under the pretext and the fallacious cry of "Reform," a condition of chaos and confusion compared with which our present condition is absolute perfection.

In making these remarks, which may seem to be overstrained, I have not in detail alluded to the proposed plan of legislation known as the Civil Code, a plan that has been pressed by its able and distinguished author year after year with most admirable tenacity. But if you will take upon yourselves to examine and carefully study it, together with some of the comments that have been made upon it, you will, I am quite sure, come to the conclusion that I have not overstated the danger that threatens us. Even the women and children are deeply concerned in preventing its passage, as they may find from reading two or three of its clauses. Thus it is solemnly declared that "husband and wife contract toward each other obligations of *mutual* respect, fidelity, and *support*," which, of course, seems very harmless on its face, and probably no one of my hearers will object to this enactment; but possibly, on reflection, a wife may think that the old-fashioned marriage, when the obligation to support was all on one side, and by which she did

not undertake to support a lazy and worthless husband, had some advantages which it might be wise to retain. Especially if she reads the next section, where it is provided that the husband is the head of the family, that he may choose any reasonable place or mode of living, and that she must conform thereto. So that when she consents to place herself within the power of a husband, she is not only bound to respect him, which may frequently be difficult, but she is in all cases bound to support him, not according to her notions of what may be reasonable, but according to his election and caprice. In other words, he, the head of the family, arranges the methods of living according to *his* fancy, and to *her* means. Probably not one of the friends of this scheme in the Legislature took the pains to consult his wife upon the subject. If he did, and he voted for a code containing these provisions, possibly she might forget the obligations of mutual respect, and fail to remember that he was the head of the family.

If you ask me whether or not this is an original invention of the codifier, I will tell you that it is not. You will find substantially the same language in the Code Napoleon, wherein it is provided that "married people owe to each other fidelity, succor, and assistance." But the French people, being a logical people, provide, in addition, that "the husband owes protection to the wife and the wife obedience to her husband," which greatly simplifies the relative rights and obligations of the parties. It is also provided in the French Code that "the wife is obliged to live with her husband and to follow him to every place where he may deem it proper to reside." When we add to this that the husband administers the fortune of his

wife as well as his own, we will find a coherent and consistent scheme; but the introduction of such elements into our views of such subjects appears to me incoherent and absurd.

As for the children, particularly the boys, who are just emerging from the chrysalis condition, I am very much afraid that they would become warm advocates of the new scheme, for its proviso that "the abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child or by its relative within the third degree, etc., and when the abuse is established, the child may be freed from the domination of the parent, the parent punished, and the duty of support and education enforced." Such provisions need no comment. It will be a comfort to the wife, however, to know that she can make a will without the authority of her husband. Probably her thoughts will turn in that direction very frequently after the enactment of this system of law.

Pressure of time will not allow me to do more than give you these brief samples of the quality and material of which this new code is composed; but from what precedes you may get some notion of its real character, so far as its serious side is concerned. It also has its ludicrous feature, of which I will briefly give you one or two specimens.

General Average was the subject of a whole chapter in the original plan. The fact that this topic was thus honored with a niche to itself in the Temple of the New Law would seem to indicate that it was a matter of no inconsiderable dignity and importance. It was accordingly subjected to a very severe scrutiny by an eminent member of the bar, who applied his dissecting knife to this particular chapter with especial zeal and

success. After his surgical efforts had been exhausted, the dissected members of the chapter were carefully collected together, sewed up, and presented in a new and—it was supposed—improved form. But, alas! the same unsparing knife cruelly resumed its business, and there was still less left of the body at the end of the second operation than before. Thereupon the learned author wisely gave up the business, and left the whole chapter out, having concluded that it was not a matter of much importance after all!

But stranger than all, the bill at present consists of about two thousand sections, that is, two thousand sections that are filled up with matter, while about one thousand are blank—these are the least objectionable—the reason assigned for this large proportion of blank sections being that succeeding Legislatures might wish to insert new matter, and this course was adopted for their convenience! What the additional insertions may be, and how far they may mar the beauty of the work as it now stands, and conflict with its present enactments, no man can tell. But is it not a significant admission of the incompleteness and insufficiency of the work that one thousand drafts in blank should thus be drawn upon the future industry of unknown Legislatures to complete a system or scheme which in the opinion of its author and admirers is to supplant our present laws, and to extract certainty, beauty, and symmetry from chaos and confusion!

Nor should you forget, in considering this subject, that the argument to be derived from what I have above stated is not only an argument against this code, but against codification itself, for the author in this case is not a tyro nor a bungler. He is a lawyer of great eminence and vast experience, and national—

I may say international—fame. He has devoted many years of his long life to the production of works of a similar character, and if he has failed of success, it is not rash to say that the task is one of singular difficulty, if not absolute impossibility of performance.

Before concluding, I may follow precedent so far as to lay down a few maxims of a homely and very practical character, which may not be without their value. They may serve you to combat what Sir Thomas Browne calls "the vulgar and common errors."

In the first place, never underrate your adversary. Never suppose that he is ignorant of the law and the facts of his case, but be certain in advance that he has mastered every dangerous point. It may not turn out so, but no harm will be done by this precaution. As in the art of fencing, your tyro blunderer is often your most dangerous foe. He may blunder so much and so grievously that he will run you through with his rapier or knock you down with his bludgeon while you are laughing at his ignorance of true art.

No case is absolutely certain, and in most instances a reasonable settlement will be an economy for your client and an advantage for yourself; but if your opponent happens to be a woman, then the necessity for a settlement is increased tenfold. In such a case ordinary prudence demands a compromise. If her case is to come before a jury, and her counsel has the last word, it is fair to compute her chances to be from 60 to 95 per cent., irrespective of merits. This will depend, of course, upon her youth and her personal appearance.

If your case is to be tried before a judge—well, it depends upon the judge; but do not flatter yourself

that because his hair has turned he is less amenable to those softening influences which are popularly supposed to be irresistible with a jury. A snowclad volcano is none the less volcanic.

Do not consider your adversary's client necessarily a knave. If you treat him politely and fairly he may become your client, and then you will wonder that you could ever have taken so excellent a fellow for anything but what he really is.

Above all, keep your temper. Many good cases have been lost because counsel was unable to conceal or to control his exasperation. No more striking instance of this can be found than in the case of Mirabeau, who was once defendant in person (there was nothing singular in that, however), in an action brought by his wife for a separation on account of his brutal treatment. Mirabeau behaved so well on the trial, up to a certain point, that he won all the judges. The case against him was very weak indeed, and the distinguished lawyer opposed to him found that he had but one chance of success, and that was, if I may use that expression, "to draw him out." So, in a vehement harangue, he turned to Mirabeau and charged him with being "a bad subject, a bad father, a bad son, and a bad husband," whereupon the eloquent and fiery tribune broke out into a tirade of most violent abuse against the man, whom he called "a vile trafficker in words." He lost his case.

Do not consider your client a saint because he is your client. Never let him say with truth that you have made any compromise with right because he paid you. He may say so, but let it be certain that he speaks falsely when he does.

Remember that the judge may decide against you

without being a fool or a knave. Sometimes he could not be for you without being one or both.

Remember that you may be both a lawyer and a gentleman; but if you have to choose between the two, take the latter. The practice of your profession will give you special facilities for showing yourself a bully. You will gain distinction by ignoring those opportunities under any possible temptation.

Bear in mind that there is no royal highway to success. You may be a genius, and if you are you will no doubt be conscious of it, but that is not enough. Others will have to discover the fact, which will take time. Meanwhile work—work hard—as though you were an ordinary mortal of mere average ability. Industry is, in nine cases out of ten, another name for genius, and much more reliable. Study the lives of our great leaders and see how little they relied on their genius, how much on their study and patient labor. If you would rival their success imitate their methods. Those methods were not their monopoly nor their secret, they were and are common property. If you would reap the fruit you must be content to sow the seed and wait with patience and faith for the harvest season. That season will come in its appointed time to fill the expectations and reward the patience of the toiler. The old curse upon man, that he shall earn his bread by the sweat of his face, contains no exceptions for us. We may get comfort from the knowledge that the curse is but a blessing in disguise.

The heights by great men reached and kept
Were not obtained by sudden flight;
But they, while their companions slept,
Were toiling upward in the night.



XX

YOUNG MEN IN POLITICS ¹

WHETHER or not our rising young men should be encouraged to enter political life depends very much upon what is meant by politics. It will hardly be denied that the term politician is not looked upon with veneration by our people, and that most men if called upon to class the individual who is labelled with that designation would not define him or describe his calling in terms of exaggerated praise. Men frequently boast that they are not politicians, meaning thereby that they are reputable and useful citizens; while the politicians themselves, when they take their vocation seriously, assume the airs of statesmen, regret the obligations and duties under which they are placed by a strong sense of public duty, and comfort themselves with the reflection that the position of a public servant is not without substantial advantages. And it cannot be denied that many ambitious young men of excellent intentions would be willing to take a share in the management of public affairs if they were quite sure that they could do so without a misalliance with a lower order of men whose methods they do not admire, whose companionship they object to, and whose speech radically disagrees

¹ Reprinted from the *New York Times*, February, 1890.

with the prejudices created by their own early education.

But, in truth, wherein do politics and statesmanship differ? The objective point and real constitution of the two are identical. The conduct of public affairs, the filling of public offices with men able and willing to carry out a certain line of policy, the triumph of certain political principles—these are the objects of the statesman as of the politician; and while the former is popularly supposed to take broad and comprehensive views and the latter to act upon narrow and selfish lines, yet is the difference one in degree rather than in kind. Many a politician of our own day had, and possibly has, in him the very material from which a genuine statesman might be carved; many a statesman dealing with the concerns of a great nation has shown that he was fully versed in and ready to use the small arts which the local politician is usually supposed to claim as his own. When Walpole cynically asserted that every man had his price, and then, proving his faith by his works, purchased members of Parliament with no scruple beyond a due regard for the amount paid in each case, wherein did he differ from William M. Tweed, the corrupter of legislatures and the purchaser of votes? And yet by common consent all men call Walpole a statesman, while Tweed alone claimed that title for himself. It is true that in addition to buying and selling others Tweed bought and sold himself, but greater statesmen than he have done likewise. Even Marlborough did that. If statesmanship and honesty were inseparable, we should have to revise our historical judgments. Let not, then, young men be misled into injurious abstinence by a dislike of the word. The politician is only a statesman looked

at through the wrong end of the glass. But the profession is honorable, and the fact that its members do not always come up to the highest standards of moral excellence, nor express their views on important topics with grammatical accuracy, only makes it the more important that an infusion of better ethical and educational elements should be injected into the mass, and leaven it into proper condition.

Dismissing this branch of the subject as being satisfactorily disposed of, and it being understood that by politics is meant the science of practical government as practised by men versed in public affairs, it needs no argument to show that the concerns of the nation, as of the state or city, should be attended to and managed by the best and ablest men in each community. Nor in the abstract will any one dispute the duty of every good citizen to become at some time or other and to some extent an active factor in the working of the governmental machinery. Should he begin early in life, while his enthusiasms are fervid and his faith in himself at least as great as it ever will be, or shall he wait until with matured experience and broadened views he is able to advise and to lead with the assurance that a practical knowledge of men and things may give?

This question is important, but it is not new (Qu. *De hoc*, as the lawyers say, is any question new?). Plutarch discussed it very fully eighteen hundred years ago, but rather reversed the form of putting it. "Whether an aged man ought to meddle in state affairs?" he asks, and generously answers in the affirmative, but he is very careful to hedge about his concession with restrictions that make it imperative on the "aged man" not to wait until the frosts of age have incapacitated

him for useful service. In other words, if he will commence early he will be allowed to continue, notwithstanding the loss of youth and its concomitant advantages. He puts the case so strongly and so well that I shall yield the floor to him for one moment, or rather adopt his sentiments and language, giving him full credit therefor:

But as for him who should in his old age, and not before, begin to meddle with public matters—as they say of Epimenides, that having fallen asleep while he was a young man he awakened fifty years after,—and shaking so long and close-sticking a repose should thrust himself (being unaccustomed and unexercised) into difficult and laborious employs without having been experienced in civil affairs or inured to the conversations of men—such a man may perhaps give occasion to one that would reprehend him to say with the prophetess Pythia:

“Thou com'st too late.”

Perhaps this warning may not be necessary, as a general rule, to our youth—they are rather disposed to come too early than too late; but our Greek monitor is quite right in his propositions, the one expressed and the other implied, viz.: that men should give their personal attention to politics while they are young and continue to take an active interest in the administration of public affairs when they are old.

But the difficulty arises—the practical one—when is the young man old enough to venture upon the arduous and responsible cares and duties of public life? Youth is a relative term. In this busy, driving, high-pressure life of ours, even a bearded chin is not a necessary appurtenance or the best evidence of fully-developed manhood. And as boys ripen into maturity under

different circumstances, some retarding and some accelerating growth, it is not possible to lay down a rule that will suit and satisfy all temperaments. The younger Pitt would have been presumably a leader in his district before he had reached his full physical stature. Hamilton dealt fierce blows against Toryism while he was in his teens. History is full of examples to show that Nature laughs at her own rules and insists upon her right to puzzle us with her contradictions. But there is, nevertheless, a general law, hard to observe though easy to lay down, and that is, not to undertake the care of others until one is able to take care of himself. It is well to learn the theory of politics; that is, the principles that are at stake, the methods of promoting them, the history of past efforts, and the objects of leading men; it is well to understand the machinery of politics as engineers do the mysteries of a steam engine. All this is eminently proper and wise. But the young man who starts upon life with the idea of making politics—or call it statesmanship—a profession and to earn his daily bread by public service, unfits himself for all other occupations, gambles away his independence, and runs the risk of finding himself in the end with the alternative of losing his living or forfeiting his self-respect. First, let him be his own master—that is to say, able to work his way through life by his unaided exertions; then let him serve the public. The public can wait. He may not think so, but some one will do the needful until he has fitted himself to take his trick at the helm and sail the ship of state, that stately ship which poets write of and so many hands are willing to guide without a knowledge of the chart or an insight into the mysteries of the compass.

The temptations and allurements of public life are singularly fascinating. To be in the public service is the goal and ultimate ambition of thousands who are better employed at the desk, or shop, or plough, or other honest occupation, be it what it may. I would earnestly implore every youth ambitious of honest and self-respecting independence to turn away from the enchantress, to fill his ears with wax as the Circe seeks to lure him to destruction.

The performance of civic duty is not incompatible with a horror of this gilded servitude. Only the man of exceptional genius, or the poor deluded victim of overweening vanity, thinks that his country needs his services in times of peace. The day may come when the State, like Diogenes, may go about seeking for willing and honest men. But I am not speaking of or for that time. In our country of to-day where public service is not a profession, where the best and most faithful servant can find no certainty of tenure and no reward proportioned to his service, let no youth of fair prospects abandon the substance for the shadow. The millenium may come; the star-eyed goddess may beam with her still potential charms on generations unborn. If so, this paper will need, and submits in advance to, revision.

I do not mean by this that all young and ambitious and intelligent men should not take some share in public life. This is something very different. It is in the power of all such to insist upon decent political methods, upon the nomination of reputable candidates, upon wise measures of legislation, upon the subordination of personal interests to the public good. All this may well be done, and the more effectually done, by those who ask no reward from the powers that be, and

no salary from the public treasury, for being outspoken and brave.

To this extent all men may be politicians and good citizens. To this extent all, rich and poor, should be vigilant custodians of the public weal. If, in the course of a busy and honorable life, distinctions come, let them and their source and their price be carefully scanned. Perhaps the bauble may not be worth the equivalent demanded or expected; then let it go to the others who may prize it more. Perhaps it may be a just reward and an honorable opportunity to add a mite to our country's honor and prosperity; perhaps a golden opportunity to earn renown, or, better still a well-deserved praise, causing some measure of real reform to become a reality. No man worthy the name needs advice about this.

But above all and in conclusion, let me say that the man who can least afford to be indifferent to the claims of politics is the man of wealth. The poor man will always, in our system of suffrage, have his advocates, some because they know that no legislation is wise that does not tend to the benefit of the poor; some because they are demagogues, and the poor have more votes than the rich. But these, the favored ones of fortune, must learn their duty, and if they will not do that let them learn their peril—for there is peril on their horizon. They hold their wealth at the mercy of the poor. It seems a paradox, but it is nevertheless true, that the millionaire holds his millions because of the self-denial of those who have no millions. Who is to protect and guard our Dives' stronghold and strong box? The army? You shrug your shoulders, of course. The law? Who makes it? The Constitution? Who makes that? The ballot? Who owns it?

But if Dives is wise, forbearing, and gentle in his power and his politics, if he so uses that power that it is not felt, and so uses his wealth that it is felt as a blessing, then Lazarus may forgive, and continue to forgive him for being so much happier than himself.





XXI

COLUMBIA COLLEGE ¹

THE brief period of a single century's life will not permit the most earnest and devoted of Columbia's sons to claim much for her on the score of age. Time has not woven its ivy about her walls, nor is her record made beautiful by the lights and shadows of poetical tradition. The imagination of those who study her history finds little in mere lapse of time to arouse enthusiasm or to justify that license of laudation which the uncertainties of remote antiquity make plausible and alluring.

Columbia has thus far barely passed the age of man; there are men now living—there certainly is one man living—who may count as many years of life as she. The wise and learned Chevreul celebrated his centennial a year ago with all the vigor and zest of youth. So long as he shall live to taunt us with this coincidence, we must be content to consider ourselves scarcely adolescent, even were we not informed that the University of Bologna proposes to celebrate its eight hundredth anniversary in 1888.

But men, as nations, do not always develop by the arbitrary standard of numbered years. Nor, as was

¹ Oration at the Centennial Celebration of Columbia College, April 13, 1887.

said of Marcellus' fame, is their glory, like that of the tree which grows by the unheeded lapse of time. There are periods of history when events long prepared burst into sudden life by a single explosion, as certain plants that flower at long intervals, passing by no perceptible transition from apparent barrenness to the height of perfect fruition. Minds mature under the influence of political or moral convulsions without reference to the ordinary requirements of time. Youth steps over the gradations that usually separate it from age and its experience, at a bound.

The end of the last century was one of those seasons of intense and feverish activity that spurned the slow processes of gradual development. The leaders of the world of thought and of action were scarcely out of their boyhood. Pitt, at twenty-four, was prime minister of England, and when the sound of the booming guns that announced the victory of Austerlitz struck him as though he had received a bullet in his breast, he was still in the full vigor of his manhood. Robespierre's brief career, so full of mischievous and unbounded power, ended at thirty-six; Napoleon had captured fortune and held her a hostage twenty years when, at forty-six, his life ended for all purposes except to point a conventional moral. Here in America the same forces were at work. Men scorned the maturity that came by slow degrees. Revolution and war would not brook the restraints of time. The natural tendency of the human mind to reject authority and to rebel against the tyranny of precedent had been strengthened and developed by the new agencies which came under its command. The press furnished to every new idea and to every new scheme of revolution, social, political, and religious, the fulcrum that Archimedes longed for in vain.

The generation of men that stood by Columbia's cradle was fast learning to take nothing upon faith and to trust but little to the sanctions of the past. Scepticism, as defined and extolled by Buckle, became the pervading quality of modern thought. The seeds sown by the philosophers and essayists of that period soon bore their fruit. Those pioneers in the sphere of new moral forces and methods left behind them a legion of followers. As we to-day look back at their first efforts, we watch with admiration or dismay, as our education or taste may prompt, their bold assaults upon the bulwarks of ancient opinion.

The sneer of Voltaire had been so potent for destruction that it now marks one of the transition places in history. Hugo, in his delirious admiration of the arch-sceptic, has ventured, with blasphemous exaggeration, to couple the cynic's mocking smile with the tear that the Divine Master shed upon the creatures that He loved and redeemed. The whole social and political fabric was to be remodeled for the benefit of mankind, and Utopia was to become a reality of every-day life. The divine right of kings, so rudely assaulted in the person of Charles I., received its death blow when Louis XVI., the most amiable of monarchs, laid his head upon the block after helping the rebel colonies to defeat their own king. Old landmarks were torn up before the new ones were found, and the world of Europe moved for a season as a ship whose compass is taken out for repairs while the helpless pilot, helm in hand, waits for the precious counsellor to be returned.

Then, while men were groping for new lights and re-acting against the law of force which had, for a season, stayed the destructive current that threatened to sweep away the ancient order of established right,

the new theory of universal knowledge was broached, and all the agencies by which the mind could be fed and the intellect developed were sought for, tested, and adopted with almost feverish haste. Wise men knew, and others felt, that the new departure would be a mockery if the old methods remained, while the old sanctions were gone; states without kings, churches without bishops, rulers without power, forms of authority without its substance, the right to sneer at all things, to disbelieve all things, to advocate all things, must be guarded by a new force, and that was decided to be Knowledge.

And thus it was that when Columbia came upon the scene she was confronted with new conditions. The drowsy and happy life of well-endowed seminaries was gone. Caps and gowns and stall-fed dignitaries might still exist as pleasing though obsolete symptoms of prosperous and scholarly ease, but the life must be a new one, and the standard, the test, the result, must be of a different complexion. The pale scholar whose elegant idleness had been sufficient for himself and for his day, must be made of sterner stuff and more durable material. Men must be sent out to meet the world, the new world: the great harvest was white for the reaper, but he must be strong and active and brave, for those who had been the last were to be the first. All who wanted to be great, thirsted for knowledge, because they were told that knowledge was power, and that the one through the other was within the grasp of all.

Knowledge is Power

Has not this shibboleth been used so long that prescription challenges criticism? It has passed from

generation to generation, from wise fathers to eager sons, with the stamp of the real coin and the ring of the true metal. Whatever else men have disagreed upon in giving worldly counsel to the rising youth, they have agreed that knowledge is power; that knowledge is the magic wand that points to the concealed treasure; that it gives wings to him who pursues fleeting fortune; strength to the weak; wealth to the poor, and opens untold possibilities of greatness to its fortunate possessor. Aladdin's lamp was but a parable of what knowledge, once mastered, might do for its possessor. The genie that did the bidding of its master was not a more obedient slave, nor more potent than the intangible, indefinable abstraction that we call knowledge. And yet even now we might venture to ask if this be literally, or at all, true. The epigrammatic precept bears the superscription of a greater one than Cæsar; that is the common opinion of men. But do all men mean what this really implies? Have wise and thoughtful teachers ever intended to convey to those who look up to them as counsellors and friends, that with knowledge alone, the paths of life were to be cleared and the prizes secured? Surely not. For mere knowledge of itself and by itself is not power. What were Orlando's sword without Orlando to wield it, or Mercury's wand without Mercury, or Milton's pen without Milton? In truth many, if not most, of the great achievements of the world, have been effected without knowledge, or with knowledge as a secondary adjunct. Charlemagne conquered Europe, and held in his rude hand the power of a dozen modern kings. It was not knowledge that drove the Saracens in bloody rout from Europe, nor knowledge that helped the modest maid of Orleans to smite her country's

foes with the vigor of a Homeric hero; nor was it knowledge that stood by the barbarian leader of Gaul or of Germany when he held Rome's legions at bay; nor was it knowledge that made Leonidas and Thermopylæ immortal. It was not knowledge that led the early Christians to brave the wild beast in the Coliseum, and smilingly to shed their precious blood for a testimony to their faith, and yet they conquered the world. The rude monk who stirred the nations of his day to leave home and friends to fight the infidels, had no knowledge that would earn that name to-day, and yet the fable of Cadmus and the dragon's teeth was more than realized by him and in his person.

Knowledge of itself is no more available to achieve success than the wire is useful while it awaits the electric current that will give it life and with it mock at time and space. Of what use is the mammoth engine that may do the work of a thousand men, if the life is not made to animate the sluggish mass by the agency of fuel and steam? The nickle coin that buys a loaf, or a newspaper, or a ride, has in it more real power than tons of hidden gold that lie concealed in the depths of a western mountain. Knowledge, of itself, does nothing. It is the man behind it who enables it to work, and draw, and fight, and write, and conquer. How would the knowledge that Columbus had have helped the world if the spirit had not leavened it and the tenacious will fought its way through the obstacles that tried, but never wearied, the brave soul?

Where did knowledge alone ever penetrate the darkness of human life, or quicken the pulse, or drive the will, or control the passions of men? The mediæval monk, who prayed and toiled from early dawn, amassed a wealth of knowledge that would have enriched the

world, but what availed it until a man was found to catch his words and imprison his thoughts and clothe them in type so that they might be echoed and re-echoed through the ages? The poet never said, as he is daily made to say, that "the pen is mightier than the sword," but he did say that:

Beneath the rule of men entirely great,
The pen is mightier than the sword.

The mightiest sword of our generation was Grant's, and the mightiest pen was Lincoln's; the one wrought its way to Appomatox and the other wrote the great proclamation of freedom. Was it knowledge that did all these things, or was it faith, the courage, the manhood, the love of country? With these the man is surely great, but without them the learning of all the schools will lie inert, useless, like the miser's treasure, great only in wasted potentialities.

If this be true, if history and our daily experience have taught it, then let the lesson of the centuries be felt in our life. Let our children know and feel that men—not more than armies—are efficient to perform their allotted functions, because they have a cumbersome mass of impedimenta to accompany them, but rather that it is the ability to use the tools that will give them the power that they seek. Teach them that the man is more than the instrument; that the spirit is the real and the best part of the man. Knowledge is the whetstone that sharpens the blade, the fire that tempers it, the monitor that teaches its use. Themistocles might not have been Themistocles if he had been born and bred among the Seriphians, but a whole colony of Seriphians transplanted into Athens and taught in the Portico might never produce a

Themistocles. The mere man, the *homo*, is sure to follow, for he is made to follow; the *vir* must lead, for he is made to lead, and will lead, whatever his birth, or condition, or surroundings.

Faith

The great complaint of thinking men to-day is that the rising generation, into whose hands the direction of public affairs must soon fall, has lost or is losing its faith.

If men have really lost the faith which cemented modern society, or if they are in danger of losing it, then is the world face to face with a new peril. Even those who affect to view the question with philosophical indifference, cannot close their eyes to the fact that a great void will then be made that something must be found to fill. The scornful concession that "religion is necessary to the government of the lower classes" might have some force and bring with it some comfort when the "lower classes" were willing to continue in their debased condition. But where are the lower classes in this age and country of ours? Education, opportunity, precedent, combine to stimulate the great mass of our people to seek for improvement and elevation. The time has long gone by when the son humbly accepted the father's place, and, with traditional humility, was content to accept transmitted servitude.

Carlyle tells us of the hard-worked peasantry of France who beat the ponds at night lest the croaking of the frogs should disturb the lord of the manor as he rested in his castle, but now the peasant's son owns the castle. The humble soldier was content to fight and die unhonored and unknown that the leader who, by

virtue of his birth, held a prescriptive right to the glory which he helped to earn, might gain fresh titles, but the rude soldier now carries the marshal's baton in his knapsack; he is himself the ancestor whose brave deeds take the place of parchment records. The many sowed that the few might reap, and both classes considered this a providential arrangement which it would be impious to disturb. The hope of compensation in a future life satisfied the longings and kept down the rebellious spirit. Men were willing to suffer, and strong to endure, while they held the belief that their tribulations would be exchanged for an infinite reward that the language of man was too poor to define or to depict. The beatitudes promised him were far beyond the immediate and finite blessings that even the richest and proudest of his masters could boast, but they were real to him, and he rejoiced in them because he saw them through the glass of faith. How else, and why else, would he have borne the burden of the day and the heat, when by the mere raising of his arm he could have shattered the whole system?

God made the stars, says Lacordaire, that men might look up. But if men cease to look up, and if faith is dying or dead, what ligament has the wit of man devised to take its place and to hold society together? What Œdipus will solve the riddle? What Æsop will have an answer for every new problem? What prophet of the new dispensation will lead men captive to the promised land, as Orpheus with his magic lyre led the listening oaks that rashly followed him? For whatever view we may take of this matter, we all know that it is a question that must be met. If the alarm sounded from pulpit and press and rostra has a true note of warning in it, then the college

of to-day has to deal and grapple with difficulties that can be decided by no precedent.

A society of men without religion would present a new spectacle and must live, if at all, upon some principle other than that which has thus far made the strong currents of life flow through its members. The morality and virtue of modern society are the practical forms of Christian teaching, not the arbitrary formulas of philosophers, nor the emanations of conventional rules. Zeno and Seneca may fill the student's mind with delight, but they have never been practical factors in forming the morals of men. Nor has the world ever so sorely needed the power and assistance of the religious motive and idea, for never before has the freedom of individual action and the liberty of opinion been so nearly absolute. The day of coerced obedience to sacred law has gone by forever. Blasphemy may be ranked among the offenses that are retained on the statute book, though long since obsolete, but it is, nevertheless, as free to preach its doctrine of destruction as the teachers of Divine truth to proclaim their own. While these discourse at stated times of the weighty topics that it is their calling to expound, others, equally eloquent, perhaps, and equally earnest, denounce these doctrines as the superannuated remnants of a decayed or imperfect civilization. But the spirit of our people will not brook the only remedies that past generations could devise to prevent assaults upon the faith that was thought as essential to the security of the social order as the foundation of the building is to the safety of the edifice.

While men differed as to the form of doctrine, and as to the doctrine itself, while they fought for a dipthong and shed human blood for a difference in a

reading, while they were divided among persecutors and persecuted, executioners and victims, as though the crime of non-conformity to this formulation or that were the weightiest that men could perpetrate, there was the one common belief in the Higher Power. Men were cruel because they were earnest, and they suffered because they were convinced.

Faith of some kind was the mainspring of society from the time that ancient Rome fell to pieces because her faith, false and hollow as it was, had gone. If, perchance, isolated instances of rebellion against the general belief showed themselves, the strong arm of temporal power dealt swiftly and surely with the enemy of society. Not the policy and teachings of Church and State alone combined to guard the sacred temple from desecration, but the common opinion of men joined the two and made them irresistible. When kings founded their claim upon a divine right, the traitor was guilty of a double crime, and no penalty could be too cruel to punish him and to deter others from like violations. To raise one's hand against God's anointed, was the extreme point which the depravity of man could reach, and was, therefore, defined and treated as the embodiment of all crimes.

And then, too, the very manifestations of nature, in which the Creator showed His power, reinforced the natural obedience of men to the Divine law. The lesson of the earthquake, of the comet, of the cyclone, or the eclipse, came upon them as the direct emanation of God's wrath, or the living proof of His warning. Horace was not the only one who turned from his careless and infrequent devotions to more pious practices when Jove suddenly and without warning clouds drove his thundering horses and swift chariot through the

clear vault of heaven. Perhaps the ease- and pleasure-loving poet was not so ready a victim to the terror which he describes as he affects, but if he was not, others were, long after the pagan temples had lost their honor. Great convulsions were always followed by redoubled zeal, and no sermon that was ever preached by human lips reached the hearts and stimulated the devout terrors of men as the tidal wave that swept away twenty thousand human beings in the twinkling of an eye. But Horace would not now leave his Falernian, nor the pleasant banks of the cool stream that he loved, because of a comet, or an eclipse, or even an earthquake, unless the rumbling menace were near enough to reach his ears; none of these heavenly portents would interrupt the ode to Lydia or to Glycera. The preacher now knows, and the hearer knows, that the phenomena which were looked on as threats of coming catastrophe, are the obedient movements of the slaves to a great law.

All this touches us more nearly than any other community. No schoolboy need be told that in our republic the government, belonging as it does to numbers, must be based upon the best qualities of men; that no society can count upon the future which, by its very nature, rests upon the caprice of ignorant, vicious, and accidental rulers. The grave experiment of subjecting the fortunes and existence of a nation of one hundred millions to the probability that the majority will be fit to rule itself and the minority, is soon to be made. We all cry out that by education alone may we solve the difficulties and problems that beset us. Even Montesquieu understood this more than a century ago: "The republican form of government," he says, "is one that peculiarly needs the

power of education. Fear in despotic governments is born of threats and punishments, but political virtue requires renunciation of itself, which is always a painful act." What is the education best adapted to do this? How shall the generation that is pushing forward to seize the helm and control the ship be taught to perform its duties? Once, within a quarter of a century, that ship was sorely beset. The lover of his country might well grow pale and cry out with patriotic anguish: *O navis, referent in mare te novi Fluctus! O quid agis?* For her masts were broken by the storm, and her main-yards groaned, and her keel could scarcely support the impetuosity of the waters. The peril is different now, and still remote. The great questions that follow large accumulations of wealth, class differences, real grievances as well as fancied wrongs, the multiform varieties of the struggle for life, must be met, and with one, the only, panacea—education. If it be really education; if it be that which draws out all that is good in men, and smothers what is bad, our panacea will do its work, and we need fear no evil. Let us have a care lest we, too, be forced to exclaim, as the poet just quoted:

Non Di quos iterum pressa voces malo.

Sore pressed with evil, you have no Gods whom you may again invoke.

The University

These reflections naturally lead us to consider the question of the American university—a living, practical one, full of momentous meaning for the future of our country.

I shall hardly undertake to define in a paragraph the university that is, or ought to be, the ideal of our day and generation.

The eminent orator and scholar who made Harvard's recent celebration memorable, asked the question, "What is a university?" and answered it by quoting himself as having said thirty years before that, "A university is a place where nothing useful is taught, but a university is possible only where a man may get his livelihood by digging Sanskrit roots."

I am not unconscious of the boldness that might be imputed to me should I attempt to criticise this epigrammatic expression of opinion from one of the leaders of our intellectual world, but I do not hesitate to say, that if the university of the future is to be an asylum for incapables, or a home for sophists, or a shelter for unprofitable servants, the sooner the truth is ascertained the better it will be for our people.

Even so respectable an occupation as the study of Sanskrit roots will never suffice to make the university a real institution in America, if its main objective point is the inculcation of useless knowledge. Whether knowledge can ever be useless might here be questioned, but I assume that the meaning intended is, that no learning of the practical, active, and vigorous order is to be admitted within the portals of this ideal establishment.

If I could venture to give a definition of my own, I should, on the contrary, proclaim that the true university is that which teaches nothing that is useless, and everything that is useful and good. That its aim should be to form a class of men who, by their training, moral and intellectual, would be the model men of the country, in the government of which they might be

expected to take a large and useful part. I would be bold enough to say, that the real university should concern itself in ripening useful talents, in eliminating useless and idle theories. Law, medicine, theology, literature—surely all these things, in all their branches and off-shoots, form useful subjects to the student. To elevate the standard of all the professions; to purify the taste and ennoble the pursuits of study-loving men; to arm these with the weapons, offensive and defensive, which experience has proved to be available in the battle of public or private life—these are aims which may well encourage the founders of our ideal university.

The college of yesterday, and the high-school that preceded it, have and must have their mission, but an ever-broadening field opens before us with increasing responsibilities and possibilities.

I know of no people who were ever yet successfully governed without a class of men, by birth, or training, or education, better fitted than other men to assume and perform the functions of government. Whether it be an army, or clergy, or nobility, or a free press, or a fearless bar, or a learned and honest bench, there must be somewhere a reserved corps of men willing, ready, and able to make, administer, and enforce the laws. No monarch ever felt secure without such coadjutors to sustain, none ever felt safe with such to oppose his power. The Prætorian Cohorts made and unmade emperors at their will, because they represented the dominant idea of force, incarnated in themselves, and used it as they would. When morals were at their lowest ebb, the populace, with no guide but its caprice, raised and tore down the purpled puppets who gave or refused the *panem et circenses* that it

clamored for and refused to clamor for in vain. In England, the barons, and the vassals held by them in their marvellous system of feudalism, furnished the stay and support which kingly power required. And as increasing civilization modified this state of things, the reign of the sword was mitigated by the advent of the intellectual element, and they became great who could sway the multitude by their voice or by their pen.

The efforts of such men became concentrated into a focus and a parliament arose, which, though obedient at times to a strong will, soon learned its power, increased it, and kept it, and now holds within its grasp absolute omnipotence, bounded only by its own self-denial. France, even in the gorgeous period of Louis XIV., was led by a brilliant aristocracy of soldiers and a growing class of writers who spread their empire slowly but surely until they, too, made and unmade kingdoms. And if the great Napoleon fell in a day, and was swept to a barren rock to die, was it not because the only chosen body that he had to sustain him went down with him at Waterloo, while the intellectual force of the age was his foe?

Where, then, in America shall we find that class of leaders to whom the thinking and working mass of our people may look with confidence and just expectation? Aristocracy, in its old and conventional sense, conveys but an empty and meaningless sound—yet is it not of the very essence of democracy that the best men should stand at the front as the guides and chosen leaders of the people? Political questions of great moment cannot be decided by public clamor in a market-place. The rule of the people means that the people shall choose its own instruments to do the work

of governing; the quality of that work shall depend upon the temper and quality of those instruments. From corrupt and polluted sources no good may come; nor can sweet and bitter water flow from the same orifice. These chosen men must be strong and brave and wise. If education be the only means by which the best that is in men may be educed, then should it be the crowning glory of our ideal university so to deal with those who enter its doors that they shall leave, full-armed and equipped, strong in faith and in hope, self-reliant, not filled with doubts and armed with negations, but positive, large, healthy-minded men. We have our schools of law, of medicine, of theology, of science; shall we not have the culmination of the school system from which shall emerge the man—full, rounded, and complete?

The idea is not a new one. Plato discussed the subject many centuries ago. "Is your meaning," asks Protagoras of Socrates, "that you teach the art of politics, and that you promise to make men good citizens?"

"That, Socrates, is exactly the profession which I make."

"Then," I said, "you do, indeed, profess a noble art."

It may be unnecessary to add that Socrates and Protagoras were not speaking of that science which is popularly known as "practical" politics, and which has other objective points than the making of good citizens.

Athletics

The new departure in athletics deserves a word of commendation and of caution. The exploits of our Columbians in this field of college education need not

be here rehearsed, but it may be said, without undue exultation, that they have proved that urbanity and physical development are not inconsistent. A man may be a gentleman and win prizes, even at football, although I fancy that the test is as severe as human nature can endure. The time was when a youth was noble who could fling the discus beyond the line, and it was a bad omen for his manhood when he gave up the exercises without which that manhood was incomplete.

*Neque jam livida gestat armis
Brachia, Sæpe disco,
Sæpe trans finem jaculo nobilis expedito.*

There is a classical flavor about these manly exercises that detracts nothing from their excellence. A sound body and a sound mind are the true watchwords of real training: the gymnasium that cared for the body and the mind was the true ideal of an educational seminary. But is there not a danger that the subdivision of labor, which is at the bottom of modern progress, may be carried to undue length in the distribution of college duties? The sound body and the sound mind should be united in the same person; not divided among several. A trained corps of athletes would hardly reward the college that produced them, if the abnormal development of the biceps or thoracic muscles had been gained at the expense of other acquisitions. The doctrine of averages would not comfort us if the physical excellence were all on one side and the mental superiority on the other. Is there no danger that emulation and an honorable anxiety to uphold the college standard may lead to that result? Whether it be so or not, time will determine; mean-

while we shall exult in the honorable victories and honorable defeats which the future may have in store for us. Cato Maior puts a question which the young athlete would answer, I think, with no hesitation, but not as that old and self-satisfied philosopher would have liked: "Milo is said to have gone around the Olympic course carrying an ox on his back; which would you prefer, to have this strength of body, or to be gifted with the intellectual powers of Pythagoras?" Where would Pythagoras stand on a show of hands? Even a respectable minority would be a triumph which the father of metempsychosis could hardly expect to secure.

But the bodily strength of Milo and the intellectual vigor of Pythagoras need not be rival candidates for supremacy; rather let the harmonious development of both, growing in close sympathy and mutual support, ripen into the best fruit which the highest culture may produce.

When, as Milton expressed it, Athens was the eye of Greece, and when Greece was the leader, model, teacher of the world, athletic exercises were not the sports of idle men, nor the resource of those who sought to make up in physical prowess what they lacked in mental attainments. But the noblest and the best devoted themselves to those pursuits and strove for the glorious palm of victory. Poets, philosophers, and orators labored to win the crown at the national games. Plato himself did not scorn, it is said, to enter the arena as a candidate for the honors there to be earned.

Pindar's grandest odes celebrate the triumphs to be won in these contests for supremacy, triumphs which appealed alike to the admiration and the envy of all.

Far above the ordinary pursuits of the citizen, far beyond the other prizes which might make immortal renown, was the glory of the victor at the Isthmian and Olympic games.

The tame pursuits which bring in daily bread and homely comfort were no fit subject for the poet whose imagination had been kindled by the fire of these themes.

The various rewards proposed for their works, are pleasing to various men [says Pindar]; both to the shepherd and to the ploughman, and to the fowler, and to him unto whom the sea gives support, and each one exerts himself to ward off direful hunger from his stomach. But he who, in games or in battle bears off beauteous glory, receives, by being praised, the highest gain, the choicest speech of citizens and strangers.

This will seem a poetical extravagance of speech in our day and generation, but the glowing language of these immortal writers will show that contempt of the body, which has too long characterized the scholar, finds no warrant in the teachings of men who were giants in their days and who are giants still.

Electives and the Classics

Who shall rule our colleges is a question that agitates the student mind to no small extent, and leaves the higher authorities not wholly undisturbed. That the imperative mood must be sparingly used is becoming a canon of well-settled college discipline; whether, and how far, occasional recourse to that mood in a softened and mitigated form may be had, is still debated, chiefly outside of Columbia.

Those who have read Cicero *De Senectute*, and have

learned from him that the seniors, or older men, were the ones who preserved and maintained the integrity of states against the rash and reckless attacks of the juniors, will not readily concede that the choice of intellectual food should be left to those who have the least knowledge on the subject; especially to those who are actuated by the most universal of nature's instincts, the desire to shorten the hours and mitigate the asperities of a day's work. *Temeritas est videlicet florentis ætatis, prudentia senescentis*. How long will this prudence of old age withstand the attacks of rash and vigorous youth? Has not the white flag of surrender already shown itself on the citadel? If the act of abdication is not already signed, the bill of rights and the Magna Charta have been delivered, and the oppressed youth of our sister institutions, at least, are near their enfranchisement, and free to play the dangerous game of liberty.

Yet it may be urged without intending offence to the growing citizen, that a deep-seated and genuine reluctance to study Greek, assuming it to exist, does not necessarily imply genius in any other direction. A student may honestly feel that Melpomene never presided at his birth, and that he was intended for other victories than those which devotion to the Muses may secure, and yet be unable to select with judgment the pursuit for which he is best adapted. This has probably been the cry since the alphabet was taught. Vocations to do are rare, but vocations not to do are common. True genius sends its arrow to the mark with an unerring instinct which painstaking mediocrity may never emulate, but it cannot expect to make its rules for the general government of mankind. The law of averages fixes in advance the number of marriages,

except, according to Buckle, when disturbed by fluctuations in the corn market; so it does the number of suicides and misdirected letters; may that law not govern us wisely in matters connected with education?

The experience of years—nay, of centuries—may not be disregarded or set aside in subservience to new theories, the value of which is still unproven. How to discipline the mind of youth and give it the proper food, is not a matter to be abandoned to chance, nor decided upon any other than well-considered grounds. The kind father will not give a stone to the child who asks for bread, but neither will he give him a stone when he asks for a stone instead of bread, nor will he let him dictate the material of which the bread—whether to feed his body or his soul—shall be compounded.

It may be that in the curriculum of our modern colleges, too much attention is devoted to a particular study, and that in the whirl of our constantly increasing activities we might, with profit, cling with less tenacity to old traditions. It may be that the Greek and Latin languages, and literature, and mathematics should be jettisoned in order that the rest of the cargo may be saved; but will the residue be worth the saving? Volumes have been written on either side of this question—which, I fancy, would never have reached the dignity of a question had not the overloaded college curriculum, groaning, creaking, and strained, cried loudly for relief.

Heretofore, familiarity with the models of ancient learning, literature, and eloquence was the crowning excellence of a generous education. No orator, poet, or historian could expect to scale his Olympus who had not been inspired by the ever-potent voice of

Athens and of Rome. Each man was great as he approached and resembled the masters who were as secure in their supremacy as the statue of the Grecian Venus in the Louvre. There she stands and smiles her defiance after all the centuries, challenging the world to match her in her mutilated beauty—a landmark, as it were, on the very verge of human perfection, fixing the limits beyond which the genius of man has never gone and may never go. *Huc usque venies*—"Thus far and no farther shalt thou come"—she seems to say.

The deepest thinkers and the wisest men—leaders of thought and of action—deemed the time well employed which they gave to the contemplation of these masterpieces. In the beauty of their conceptions, in the chastity of their style, in the art which marked their productions, written or spoken, the inspiration of these models was to be traced. The noblest periods that ever shook the halls of Westminster were the echoes of the hushed yet living voices of antiquity; they came from patriots and scholars who with becoming gratitude acknowledged the greatness of the obligation. So it has been in our own day and with our own leaders. Our most honored magistrates and most eloquent advocates have drawn freely from these fountains. The Erskine of America, Rufus Choate, like the Erskine of England, exulted in the possession of the treasures that he had discovered while seeking the fountains of learning and art. Webster, the master of our masters, in his matchless oratory, blessed and thanked the Alma Mater that had conducted him to the glorious land whence he had come back laden with untold wealth. At all times, in all countries, where the charms and refining influence of scholarly

pursuits have been prized as they deserved to be, these noble studies expanded, enriched, and delighted the minds that were capable of feeling their spell. Their creative power and influence are as clearly traceable in the intellectual productions of modern times as the influence of Greek art in the architecture and sculpture of the centuries that have followed the fall of Athens. No statute of limitations can bar the operation of such influences; true genius works for no time or country, but with marvellous reproduction recreates itself for the benefit of all ages and all men.

Early History of the College

The history of the college, I have said, lacks those elements of poetry which are born of twilight and imagination.

The inscription on the first stone laid by King's College—the first in the province of New York—bears the recent date of 1755. The college is only some twenty years older than the nation. Its beginnings were humble—the times were stormy—and funds were scant.

The first president of record was the Rev. Dr. Samuel Johnson, who left his quiet home at Stratford to take the presidency of the new college, and to receive therefor the not very munificent salary of £250 per annum. We may infer from this that he was not actuated by mercenary motives, even when we couple the actual stipend proposed and accepted with the suggestion made by the trustees that the vestry of Trinity Church might thereafter make a reasonable addition to the sum named.

The most conspicuous service rendered by the

learned doctor appears to have been to devise the college seal, the principal feature of which embodies a prophetic vision of the future, for he pictures a lady sitting on a throne, or chair, with several children at her knees, to represent the pupils. It is to the credit of Columbia that not only in this allegorical form does she recognize the true function of woman in the cause of education, but that she has practically entered upon the duty of fitting woman for the quality of teacher by first permitting her to be a pupil.

The learned doctor's labors were considerably interfered with, and his peace of mind disturbed by a great and no doubt fully justified apprehension of the small-pox, for in November of 1757 he fled to the County of Westchester, where he remained about a year, to allow that dreadful scourge to disappear, and in '59 he was again compelled to fly and remain absent six months. But as others continued in charge of the college its quiet pursuits were uninterrupted, and in 1758 the first commencement was held at which the degree of Bachelor of Arts was conferred on eight students. Three of these had been educated at Philadelphia, or at Princeton, but desired, apparently, to start in the world with the *éclat* of a diploma from King's College. Only two young gentlemen were admitted to the degree of Bachelor of Arts in the following year; one of whom had already received at Princeton such education as that college at that time could bestow; the other being the only one out of six admitted in '55 who had persevered to the end. The minute care with which the college, even then, interested itself in its growing children is manifested by the very frank expressions which are found in the matricula of the college respecting those who entered the Freshman

class of that year ('55). One of them appears, from these notes, in the third year to have gone to Philadelphia College, presumably because the standard of King's College was too high, or the application required too severe. Another, made of sterner stuff, about the middle of the second year went into the army; another, after the third year, considering, no doubt, that he had acquired all the knowledge that commercial pursuits demanded, went to merchandise; of the fourth, it is said that after about two years he went to privateering—as it were, a special course of commercial training; and of the fifth, it is said that after three years, he went to nothing.

But neither the smallpox, nor a lack of students, nor scarcity of funds, interfered with the growing academy. At all times, and from the very beginning, its aims were of the highest, and it does not seem to be an exaggeration to state here that to-day, in its full development and in the fruition of its efforts and labors, Columbia College has simply carried out the promises of its early founders.

It may be observed that one of the advantages incident upon the late birth of this institution has been to free it from the trammels and embarrassments which its predecessors have had to contend against. There was nothing in the charter requiring Columbia to exert itself in behalf of the Indians, nor to support a learned corps of missionaries to reclaim them from their hopelessly wild and dissolute habits.

It is a striking commentary upon the ready response that King's College found in the City of New York, that some of the most distinguished men of the revolutionary period were then among its students. The freshman class of 1762 was composed of John

Jay, Egbert Benson, Robert R. Livingston and many other men whose record is a part of our history.

It did seem, at one time, as though Fortune had removed the bandage from her eyes and intended to smile upon the deserving and struggling college. A grant of 24,000 acres of land was made, but as it turned out to be in debatable territory, which the State of New York abandoned to Vermont for the sum of \$30,000, which sum the State retained, no benefit ever accrued from this apparently munificent donation.

Dr. Johnson's successor, the Rev. Dr. Cooper, was destined to undergo even more serious tribulations than those encountered by his predecessor. Although we do not hear that he was driven abroad by small-pox, it is certain that the even tenor of his life was greatly disturbed by the premonitory symptoms of the explosion of 1776. His proclivities were, naturally enough, in favor of the British Government, and it is said that in a literary skirmish between himself and an anonymous adversary he was badly worsted, which no one will wonder at who is informed that the pen of that adversary was held by Alexander Hamilton, then a student in one of the younger classes. Napoleon is reported to have sought to comfort an Austrian officer who bitterly bewailed his fate, after the French victory of Austerlitz, by saying: "Young man, you need not be mortified at being defeated by *me*"; and we will think none the less of the learned doctor because his steel was not equal to that of the boy-champion in the cause of liberty.

But if it was natural that Dr. Cooper should maintain and express his feelings of loyalty to the crown, it was equally natural and to be expected that the expression of those feelings should be viewed with

much resentment by those about him. Only one year before the Declaration of Independence was signed, a letter was addressed to him and a few other obnoxious but probably very harmless gentlemen, ascribing to them all the desolation which was in part then felt and in part anticipated by the residents of New York. This letter, fortunately, closed with good advice, and still more fortunately, the doctor was wise enough to follow it: "Fly for your lives, or anticipate your doom by becoming your own executioners." Signed, "Three Millions." The doctor, availing himself of the choice thus generously left him by the signer or signers of this letter, adopted the first alternative, and escaped in the dead of night, only half dressed, over the college fence.

After adventures, or misadventures, which it is not my purpose to relate, he succeeded in reaching his native country, where he spent the remainder of his life among staunch and sturdy loyalists, far from the threats and execration of unreasonable rebels.

The college was forcibly seized in 1776, and the record of that year shows that the confusion which prevailed in every part of the country effectually suppressed every literary pursuit.

In 1784, the legislature of New York granted certain privileges to the theretofore called King's College, and three years later the act was passed under which it received its new life and under whose beneficent influence it has since pursued its prosperous career.

In 1820, the college possessed the inestimable privilege of seeing most of her offices filled by her own children; Professors M'Vickar, Moore, Anthon, and Renwick were all reared by her; their names are household words, and the history of the college from

that day forward is one of unbroken progress. What she has done, where she stands, and what success she has met with, we all know. The twenty-four students who constituted the number within her walls when Dr. Johnson left have now expanded to sixteen hundred.

In every walk of life her graduates have done their state and country honor. From the time when John Jay, Alexander Hamilton, and DeWitt Clinton occupied the highest positions in the councils of the nation, on the bench, or in the senate, her children have been conspicuous in the government of our country, state, and city. The record of illustrious names to which she can point would be as long and as tedious as Homer's catalogue of the ships that carried the Greeks to Troy. An alumnus was mayor of New York one hundred years ago, another is mayor to-day. The chief adviser of the city, the attorney for the people, the president of the Board of Aldermen, judges on the bench, members of the Legislature and of Congress, in all positions of life we find them, honored and respected public servants. If the tree may be known by its fruits, then may Columbia feel proud of her nobility, of her service in the past, of her promise of future usefulness.

And why should she not be a leader among the first? Born and raised in the Imperial City of the continent, she has grown with its growth, and flourished with its prosperity. With the vivifying influence of a vast and active population to keep her from stagnating into decorous ease, with the growing affluence which requires corresponding culture, with a generous emulation to outstrip her brilliant and friendly rivals, why should not Columbia justify the best aspirations of her founders? There is no limit to her possibilities of

good, provided she may ever count upon the loyal and loving adherence of her children. If that does not fail her, the measure of her prosperity will be filled. The hardening processes of our modern life, the heat of competition in the arduous struggle for existence, are apt to deaden sentiment by repressing its manifestations. But as no man need blush because his heart beats high and his speech grows warm for his country, his home, or his faith, so need he never blush because a tender chord binds him to the mother that made him what he is. True sentiment is not weakness; it is strength. It makes fragrant the commonplaces of life; it throws a purple mantle over the humblest occupation, and keeps alive the sacred fires in the temple of pure and genuine manhood.

THE END

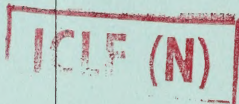


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